SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 73

UNITED STATES, Appellant,

vs.

GRINNELL CORPORATION, ET AL.

No. 74

GRINNELL CORPORATION, Appellant,

vs.

UNITED STATES

No. 75

AMERICAN DISTRICT TELEGRAPH COMPANY, Appellant,

vs.

UNITED STATES

No. 76

HOLMES ELECTRIC PROTECTIVE COMPANY, Appellant,

vs.

UNITED STATES

No. 77

AUTOMATIC FIRE ALARM COMPANY OF DELAWARE, Appellant,

vs.

UNITED STATES

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Volume II

INDEX

	Original	Print
Record from the United States District Court for the District of Rhode Island—Continued		
Transcript of trial held in USDC for the District of Massachusetts, Boston, June 15, 16, 17, 22, 23 and 24, 1964	462	325
Appearances	462	325
Colloquy and offer in evidence of Government Exhibits 1 through 307 and objections thereto	463	325
Offer in evidence of additional Government Exhibits	470	330
Colloquy between Court and counsel for defendants	479	335
Ruling of the Court	487	339
The Government rests	498	345
Colloquy between Court and counsel for defendants	498	345
Testimony of Francis Guibert—		
—direct (by Mr. Fritz)	538	350
—cross (by Mr. Story)	594	380
—redirect (by Mr. Fritz)	603	385
Ray Brechbill—		
—direct (by Mr. Fritz)	604	386
Colloquy between Court and counsel off the record	611	390
Testimony of Ray Brechbill—		
—resumed direct (by Mr. Fritz)	623	396
—cross (by Mr. Story)	650	411
—redirect (by Mr. Fritz)	651	412
Howard B. Schultz—		
—direct (by Mr. Fritz)	652	412
Edward Gaston—		
—direct (by Mr. Williams)	688	432
George Simon—		
—direct (by Mr. Fritz, Jr.)	707	443
William Arthur Crichton—		
—direct (by Mr. Fritz, Jr.)	714	447
Paul C. Sherer—		
—direct (by Mr. Fritz, Jr.)	728	445
Edward Carrier—		
—direct (by Mr. Fritz, Jr.)	746	465
Lawrence M. De Shane—		
—direct (by Mr. Conkling)	761	473
Roy Elliott—		
—direct (by Mr. Williams)	769	477
George L. Martin—		
—direct (by Mr. Williams)	772	479
Henry Fitzgerald—		
—direct (by Mr. Williams)	774	480
Walter Hennessey—		
—direct (by Mr. Williams)	775	480
John Vincent Polio—		
—direct (by Mr. Williams)	775	481

	Original	Print
Record from the United States District Court for the District of Rhode Island—Continued		
Transcript of trial held in USDC for the District of Massachusetts, Boston, June 15, 16, 17, 22, 23 and 24, 1964—Continued		
Testimony of Ray Brechbill—Continued		
Robert E. Landick—		
—direct (by Mr. Williams)	776	481
Thomas Sherman—		
—direct (by Mr. Williams)	778	482
Testimony of James O. Maxey—		
—direct (by Mr. Fritz)	783	485
Offers in evidence of defendant ADT and objections thereto	804	496
Offers in evidence of defendant Holmes Electric Protective Company and objections thereto	805	496
Offers in evidence of defendant AFA and objections thereto	805	497
Offers in evidence of excerpts from depositions and objections thereto	806	497
Testimony of Daniel Francis Collins—		
—direct (by Mr. Williams)	807	498
Walter Joseph Swett, Jr.—		
—direct (by Mr. Williams)	811	500
Albert Earl Smith—		
—direct (by Mr. Fritz)	815	502
—cross (by Mr. Story)	827	509
—redirect (by Mr. Fritz)	836	514
Walter Darl Simpson—		
—direct (by Mr. Fritz)	838	515
William F. Hable—		
—direct (by Mr. Conkling)	839	516
—cross (by Mr. Story)	885	541
Francis C. Evans—		
—direct (by Mr. Conkling)	892	544
James A. McDonald—		
—direct (by Mr. Fritz)	900	549
—cross (by Mr. McInerney)	952	576
—cross (by Mr. Story)	961	581
Robert J. Fahey—		
—direct (by Mr. Fritz, Jr.)	963	582
—cross (by Mr. Story)	982	592
Testimony of Andrew M. Rouse—		
—direct (by Mr. Fritz, Jr.)	991	596
Lawrence J. O'Brien—		
—direct (by Mr. Fritz)	1005	603
—cross (by Mr. Story)	1041	623
—redirect (by Mr. Fritz)	1057	632
Thomas P. Drew—		
—direct (by Mr. Fritz)	1059	633
—cross (by Mr. Story)	1071	640

	Original	Print
Record from the United States District Court for the District of Rhode Island—Continued		
Transcript of trial held in USDC for the District of Massachusetts, Boston, June 15, 16, 17, 22, 23 and 24, 1964—Continued		
Testimony of Andrew M. Rouse—Continued		
John A. Mahoney—		
—direct (by Mr. Fritz, Jr.)	1082	645
Dr. Jessie William Markham—		
—direct (by Mr. Williams)	1090	650
James Douglas Fleming—		
—direct (by Mr. McInerney)	1129	668
—cross (by Mr. Fritz)	1180	695
Defendant Grinnell's motion to strike certain of plaintiff's exhibits	1188	699
Clerk's note re Joint motion to correct transcript of June 15-24, 1964	1194	702
Transcript of post-trial argument, October 9, 1964	1199	703
Statement by Mr. Fritz on behalf of defendants ADT, Holmes Electric Protective Company and AFA	1200	703
Statement by Mr. McInerney on behalf of Grinnell Corporation	1221	714
Statement by Mr. Story on behalf of the Government	1253	731
Two letters from Wyzanski, J. to Clerk, Neal D. Murphy, dated November 27, 1964 listing errors in opinion	1267	738
Findings of fact, Conclusions of Law and Opinions, Wyzanski, J.	1270	741
Final decree, November 27, 1964	1302	768
Notice of appeal of plaintiff to the Supreme Court of the United States	1304	770
Notice of appeal of Defendant Grinnell Corporation to the Supreme Court of the United States	1308	771
Notice of appeal of Defendant Holmes Electric Protective Company to the Supreme Court of the United States	1317	774
Notice of appeal of Defendant Automatic Fire Alarm Company of Delaware to the Supreme Court of the United States	1326	778
Notice of appeal of Defendant American District Telegraph Company to the Supreme Court of the United States	1335	781
Application of the United States for an enlargement of time for docketing case on appeal	1342	784
Order extending time to file	1344	785
Application of defendants for an extension of time for docketing case on appeal (excerpts)	1345	786
Order extending time to file	1349	787
Order noting probable jurisdiction	1350	788

Exhibit Volume I

Record from the United States District Court for the District of Rhode Island—Continued

GOVERNMENT'S EXHIBITS	Original	Print
No. 1—NBFU No. 71, Standard of the National Board of Fire Underwriters for the Installation, Maintenance and Use of Central Station Protective Signaling Systems for Watchman, Fire Alarm and Supervisory Service as recommended by the National Fire Protection Association, July, 1958 and July, 1959 Amendments	1351	789
No. 2—NBFU No. 72—Standard of the National Board of Fire Underwriters for the Installation, Maintenance and Use of Proprietary, Auxiliary, Remote Station, and Local Protective Signaling Systems, July, 1958	1375	813
No. 3—Underwriters Laboratories, Inc. (UL 611), Standards for Safety, Central Station Burglar Alarm Systems, December, 1956	1405	843
No. 4—Underwriters Laboratories, Inc., Accident, Automotive, and Burglary Protection Equipment Lists, September, 1961	1439	877
No. 5—Manual of Burglary Insurance, Pages 212-215; 333-336; 417 and 418	1574	1012
No. 6—Approved Equipment for Industrial Fire Protection, 1962-1963, Associated Factory Mutual Fire Insurance Companies	1584	1022

Exhibit Volume II

No. 7—Introductory letter from ADT General Commercial Manager, A. E. Smith to Commercial Superintendents and Representatives, dated March 30, 1953 transmitting proposed ADT Sales Manual, "Selling ADT Service" (excerpts)	1742	1179
No. 9—Agreement dated March 1, 1907 between ADT and the Brooklyn Telegraph and Messenger Company, Brooklyn, New York (excerpts)	1753	1187
No. 10—ADT acquisition agreement of the Merchants Fire & Dispatch Company, Los Angeles, California, dated August 1, 1907 (excerpts)	1763	1189
No. 11—ADT acquisition agreement of the Bankers' Electric Protective Company and American Bank Protection Company, dated June 27, 1908	1769	1191
No. 12—ADT acquisition agreement of the Pinkerton National Detective Agency and Pinkerton's Protective Patrol, dated February 21, 1908 (excerpts)	1772	1194

	Original	Print
Record from the United States District Court for the District of Rhode Island—Continued		
GOVERNMENT'S EXHIBITS—Continued		
No. 13—ADT acquisition agreement of The Still Alarm Company, dated September 6, 1913 (excerpts)	1777	1195
No. 14—ADT acquisition agreement of the Manhattan Fire Alarm Company, dated April 9, 1917 (excerpts)	1783	1196
No. 15—ADT acquisition agreement of The Still Alarm Company, dated November 27, 1918 (excerpts)	1787	1198
No. 16—ADT acquisition agreement of the Pacific Messenger Company, dated September 9, 1926 (excerpts)	1789	1199
No. 17—ADT acquisition agreement of the American Still Alarm of Detroit, dated September 29, 1926 (excerpts)	1793	1200
No. 18—ADT acquisition agreement of the Baltimore National Automatic Fire Alarm Company of Baltimore City, dated April 26, 1928 (excerpts)	1798	1202
No. 19—ADT acquisition agreement of the Spokane Alarm Company of Spokane, Washington, dated August 30, 1928 (excerpts)	1808	1203
No. 20—ADT acquisition agreement of the Reliance Electric Protective Company, Chicago, Illinois, dated November 16, 1931 (excerpts)	1809	1204
No. 21—ADT acquisition agreement of the Los Fire Alarm Company, Los Angeles, California, dated January 13, 1933 (excerpts)	1810	1205
No. 22—ADT acquisition agreement of the Lewis Signal and Alarm Corporation, Sioux City, Iowa, dated August 8, 1934 (excerpts)	1811	1206
No. 23—ADT acquisition agreement of the Signal Protective Service Company, St. Louis, Missouri, dated February 8, 1935 (excerpts)	1816	1208
No. 24—ADT acquisition agreement of the Automatic Alarms, Ltd., Los Angeles, California, dated July 15, 1936 (excerpts)	1824	1209
No. 25—ADT acquisition agreement of the Los Angeles Central Station, Inc., Los Angeles, California, dated May 20, 1938 (excerpts)	1829	1210
No. 26-1—ADT acquisition agreement of the Reliance Alarm Company, (R. Houghton) Detroit, Michigan, dated August 9, 1946	1835	1211
26-2—ADT acquisition agreement of the Reliance Alarm Company, (Peter Bens) Detroit, Michigan, dated August 9, 1946	1837	1213

Record from the United States District Court for the District of Rhode Island—Continued

GOVERNMENT'S EXHIBITS—Continued	Original	Print
26-3—Schedule Showing Computation of Purchase Price	1839	1216
No. 27—ADT acquisition agreement of the American District Telegraph Company of Hamilton County, Ohio, dated October 28, 1946 (excerpts)	1840	1217
No. 28-1—ADT acquisition agreement of the Ludlow Automatic Fire Alarm Company, Cincinnati, Ohio, dated October 28, 1946 (excerpts)	1847	1220
28-2—Memorandum for J. A. MacDonald, Auditor Re: Purchase of Ludlow Companies, Cincinnati, Ohio, dated December 2, 1946 (excerpts)	1854	1223
No. 29—ADT acquisition agreement of the Crown Burglar Alarm Systems, Pasadena, California, dated May 13, 1954 (excerpts)	1857	1224
No. 30-1—ADT acquisition agreement of the Globe Electric Protection Company, Ocean City, New Jersey, dated June 8, 1954	1863	1227
30-2—Letter from Ray Brechbill to Harold H. Gray, Globe Electric Protective, dated June 15, 1954 re amendments to agreement	1866	1231
No. 31—ADT acquisition agreement of the General Alarm Corporation, Boston, Massachusetts, dated March 9, 1955 (excerpts)	1867	1232
No. 32—ADT acquisition agreement of the Federal Automatic Alarm Co., Inc., Albuquerque, New Mexico, dated June 10, 1959 (excerpts)	1869	1233
No. 37—Holmes acquisition agreement of the Mercantile Burglar Alarm Company, New York, New York, dated December 15, 1925 (excerpts)	1873	1236
No. 38—Holmes acquisition agreement of the Metropolitan Electric Protective Company, New York, New York, dated August 3, 1928 (excerpts)	1875	1237
No. 39—Holmes acquisition agreement of the Silent Electric Protective Corporation, New York, New York, dated December 14, 1928 (excerpts)	1889	1249
No. 40—ADT acquisition agreement of the Los Angeles Central Station, Inc., Los Angeles, California, dated May 20, 1938 (excerpts)	1893	1251
No. 41—Memorandum from ADT President E. Ward to ADT Vice President J. A. MacDonald, captioned, Lewis System-Sioux City, Iowa, dated November 19, 1951	1901	1254

	Original	Print
Record from the United States District Court for the District of Rhode Island—Continued		
GOVERNMENT'S EXHIBITS—Continued		
No. 42—ADT acquisition agreement of the property interest of Automatic Fire Protection Company in the 1907 allocation agreements, dated January 1, 1949 (excerpts)	1902	1255
No. 43—Memorandum by ADT Vice President A. E. Smith reporting on Meeting with owners of Central Watch Service (Stackler), Chicago, Illinois, dated February 10, 1960 (excerpts)	1917	1267
No. 44—Memorandum from ADT Assistant to General Sales Manager L. B. Straus to ADT General Sales Manager L. J. O'Brien, captioned, Tulsa, Oklahoma, dated April 14, 1960	1922	1270
No. 45—Memorandum from ADT Vice President A. E. Smith to ADT President E. Gaston, dated April 7, 1960	1923	1271
No. 46—Memorandum by ADT Vice President A. E. Smith captioned, Report on Tampa Signal Co., Inc., (Florida Corporation) dated March 22, 1960	1929	1275
No. 47—Memorandum from ADT Vice President A. E. Smith to ADT Vice President J. A. MacDonald, captioned, Tampa Signal Company, Inc., dated August 31, 1960	1936	1281
No. 48—Memorandum from ADT District Sales Manager E. O. Betscher to ADT General Sales Manager L. J. O'Brien, captioned, Tampa, Florida, dated March 20, 1961	1938	1282
No. 49—Memorandum from ADT Vice President A. E. Smith to President E. Gaston, captioned Tampa Signal Company, Inc., dated March 23, 1960	1940	1283
No. 50—Letter from ADT President E. Gaston to President H. G. Clark of the Rhode Island Electric Protective Company, dated October 1, 1958	1942	1284
No. 51—Letter from President H. G. Clark of Rhode Island Electric Protective Company to ADT President E. Gaston, dated July 8, 1955	1944	1286
No. 52—Letter from ADT President E. Gaston to President H. G. Clark of the Rhode Island Electric Protective Co., dated June 16, 1955	1945	1287
No. 53—Memorandum from ADT President E. Gaston to First Vice President J. A. MacDonald, captioned, Rhode Island Electric Protective Company, dated July 28, 1958	1946	1288
No. 54—Letter from Holmes President H. C. Ward to The Stockholders of Newark District Telegraph Company, dated July 7, 1960	1948	1290

	Original	Print
Record from the United States District Court for the District of Rhode Island—Continued		
GOVERNMENT'S EXHIBITS—Continued		
No. 55—Unsigned handwritten notes entitled "Board of Directors Meeting, February 20, 1958", obtained from the files of Holmes	1955	1295
No. 56—Letter from AFA President T. P. Drew to Grinnell President J. D. Fleming, dated May 29, 1956	1959	1296
No. 57—Letter from AFA President T. D. Drew to Central Station Signals, Inc., dated February 16, 1959	1962	1299
No. 58—Memorandum for File by ADT President E. Gaston, captioned, Central Station Signals, Inc., New York, N.Y., dated May 22, 1959	1967	1303
No. 59—Memorandum from ADT President E. Gaston, entitled, Appendix to President's Report for Meeting of November 19, 1959, dated November 13, 1959	1969	1305
No. 60—Letter agreement from AFA to The Stockholders of Central Station Signals, Inc., dated December, 1960	1971	1306
No. 61—Agreement between ADT and Holmes, dated September 28, 1906	1979	1312
No. 62—Agreement between ADT and Holmes, dated March 26, 1918	1983	1315
No. 63—Agreement between ADT and Holmes, dated June 14, 1922	1992	1322
No. 64—Agreement between ADT and Holmes, dated March 3, 1927	2000	1329
No. 65—Letter from Holmes President A. W. Allen to ADT President C. C. Johnson, dated June 13, 1932	2005	1335
No. 66—Letter from "President" to Holmes President A. W. Allen, dated July 8, 1932	2006	1336
No. 67—Letter from ADT Vice President C. C. Johnson to Holmes President H. S. Stevens, dated January 31, 1924	2007	1337
No. 68—Letter from Holmes President H. S. Stevens to ADT Vice President C. C. Johnson, dated February 4, 1924	2008	1338
No. 69—Agreement between ADT and Holmes, dated March 25, 1930	2009	1338
No. 70—Letter from ADT Sales Representative J. A. Summers to Holmes Vice President W. F. Burress, dated June 11, 1956	2012	1341
No. 71—Memorandum from ADT District Sales Manager E. J. Heisley to General Sales Manager L. J. O'Brien, captioned Gerard Trust Company, Philadelphia Area, dated March 31, 1959	2014	1343

	Original	Print
Record from the United States District Court for the District of Rhode Island—Continued		
GOVERNMENT'S EXHIBITS—Continued		
No. 72—Letter from ADT President C. C. Johnson to Holmes President A. W. Allen, dated June 16, 1930	2016	1345
No. 73—Letter from ADT General Commercial Manager A. E. Smith to ADT Commercial Superintendent D. R. Hall, captioned, Ford Motor Company, Parts Warehouse, Pittsburgh, Pa., dated May 12, 1953	2018	1346
No. 74—Letter from ADT Sales Representative E. C. Dowling to Jay Misicka, American-Marietta Company, Chicago, Illinois, dated May 10, 1961	2019	1348
No. 75—Letter from Holmes "President" to ADT President C. C. Johnson, dated June 28, 1939	2021	1350
No. 76—Letter from ADT President C. C. Johnson to Holmes President A. W. Allen, dated July 11, 1939	2022	1351
No. 77—Letter from ADT Special Representative H. E. May to L. E. Burke, Sears, Roebuck and Company, Philadelphia, Pennsylvania, dated October 31, 1957	2023	1352
No. 78—Agreement dated February 18, 1904 between Robert L. McElroy and ADT	2024	1353
No. 79—Agreement dated April 21, 1905 between Robert L. McElroy and Automatic Fire Protection Company	2034	1361
No. 80A, B, C—Three Agreements dated April 29, 1907 between Grinnell, ADT, AFA and the Automatic Fire Protection Company	2036	1362
No. 81—Agreement dated June 13, 1913 between ADT, Automatic Fire Protection Company and Fire Protection Development Company	2067	1387
No. 82—Letter agreement between ADT and General Fire Extinguisher Company (Grinnell) dated June 2, 1932	2078	1396
No. 83—Letter agreement between ADT and General Fire Extinguisher Company (Grinnell) dated June 2, 1939	2079	1397
No. 84—Agreement dated February 18, 1954 between ADT and AFA	2080	1398
No. 85—Memorandum for File, by ADT Vice President J. A. MacDonald, captioned, Grinnell Corporation Negotiation, dated October 8, 1951	2085	1402
No. 86—Memorandum from Grinnell Counsel R. T. Clapp to Grinnell President J. D. Fleming, captioned, ADT Matter, dated November 15, 1951	2096	1421

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
Government's Exhibits—Continued		
No. 87—Memorandum from Grinnell Counsel R. T. Clapp to Grinnell President J. D. Fleming, captioned, ADT Matter, dated January 5, 1952	2100	1425
No. 88—Memorandum of Grinnell Secretary and Counsel R. T. Clapp entitled, Memorandum of Conference at Mr. Ward's Office, American District Telegraph Company, June 9, 1948, dated June 11, 1948	2105	1430
No. 89—Agreement dated December 29, 1952, between ADT and Grinnell	2108	1434
No. 92—Letter from ADT President E. Gaston to Grinnell Treasurer C. H. Rison dated June 19, 1959	2148	1471
No. 93—Letter from ADT President E. Gaston to AFA President T. P. Drew dated January 13, 1959	2150	1473
No. 94—Letter from AFA President T. P. Drew to Grinnell President J. D. Fleming dated February 13, 1959	2160	1483
No. 95—Letter from ADT President E. Gaston to Grinnell President J. D. Fleming dated February 6, 1959	2163	1486
No. 96—Memorandum from ADT Controller C. G. Eicker to Vice President J. A. MacDonald, captioned—Rate Development—dated June 29, 1956	2165	1487
No. 97—Letter from AFA Sales Manager J. J. Heavey to Davis, Dorland & Co., New York, N.Y., dated October 5, 1956	2191	1518
No. 98—Letter from ADT Auditor J. A. MacDonald to AFA President T. P. Drew, captioned—Solicitation of Industrial Process Service in Conjunction with Sales of S.S. & W.F. Service—dated June 10, 1948	2192	1519
No. 104—Letter from ADT Assistant Secretary E. A. Gaston to AFA President T. P. Drew, captioned—Albert H. Voight, Inc., Philadelphia, Pa.—dated July 7, 1961	2194	1521
No. 107—Letter from Grinnell Secretary R. T. Clapp to AFA President T. P. Drew dated May 15, 1959	2195	1522
No. 111—Agreement dated December 24, 1953 between ADT, AFA and Grinnell	2196	1523
No. 112—Letter from T. P. Drew, President of AFA to F. J. Lehner, L. W. Thomason, F. Durward Chase and A. G. Seddon, dated December 21, 1954 re transmittal of Letter Agreement dated December 15, 1954 between ADT, AFA and Grinnell	2200	1525

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
GOVERNMENT'S EXHIBITS—Continued		
No. 128—Agreement dated March 29, 1954 between ADT, Grinnell and the Rhode Island Electric Protective Company	2205	1528
No. 129—Agreement dated March 29, 1954 between ADT and the Rhode Island Electric Protective Company	2212	1534
No. 130—Memorandum from ADT Vice President J. A. MacDonald to ADT Secretary John Hannon dated December 10, 1953	2218	1540
No. 131—Letter from ADT Vice President A. E. Smith to President H. G. Clark of the Rhode Island Electric Protective Company dated December 11, 1958	2220	1542
No. 132—Letter from Rhode Island Electric Protective Company President H. G. Clark to ADT, dated February 5, 1963	2221	1543
No. 133—Letter from Rhode Island Electric Protective Company President H. G. Clark to Grinnell, dated January 19, 1961	2223	1545
No. 139—Memorandum from ADT District Sales Manager E. J. Heisley to ADT General Sales Manager L. J. O'Brien, captioned, Competition-Washington District, dated September 14, 1956	2224	1546
No. 140—Memorandum from ADT Superintendent of Field Service R. T. Warner to ADT General Commercial Manager A. E. Smith, captioned, Competition-Milwaukee, dated May 19, 1953	2227	1549
No. 141—Memorandum from ADT District Sales Manager W. K. Francis to ADT General Sales Manager L. J. O'Brien, captioned, Competition-Paramount Pictures Corporation, Los Angeles, California, dated August 10, 1956	2229	1550
No. 142—Memorandum from ADT District Sales Manager W. K. Francis to ADT General Sales Manager L. J. O'Brien, captioned, Paramount Pictures Corporation, Los Angeles, California, dated May 9, 1957	2230	1552
No. 143—Memorandum from ADT Assistant to General Sales Manager W. W. Dooley entitled, Report on Survey of Sales Potential, San Jose Peninsula, (Not dated)	2232	1554
No. 144—Memorandum from ADT District Managers to ADT General Managers, captioned, Competition-Peoria, Illinois, dated December 12, 1955	2235	1556

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
GOVERNMENT'S EXHIBITS—Continued		
No. 145—Handwritten confidential memoranda from ADT Representative W. Rohlfing captioned Call's Police Signal, Chelsea, Massachusetts, dated July 16, 1956	2238	1559
No. 146—Memorandum from ADT District Sales Manager R. T. Warner to ADT Vice President A. E. Smith, captioned, Call's Police Signal Corporation, Chelsea, Mass., dated September 24, 1956	2242	1561
No. 147—Memorandum (unsigned) to ADT District Sales Manager E. Turnbull, captioned, Competition; Merchants Police, Milwaukee, Wisconsin, dated July 30, 1955	2243	1562
No. 148—Memorandum from ADT Sales Representative R. P. Lucy to ADT District Sales Manager W. K. Francis, captioned Competition-Bay Burglar Alarm Company, dated March 28, 1958	2245	1564
No. 149—Memorandum from ADT District Sales Manager W. K. Francis to ADT Commercial Superintendent E. B. White, captioned General Plant Protection Company, Los Angeles, California, dated May 15, 1952	2246	1565
No. 150—Memorandum from ADT District Managers to ADT General Managers, captioned Proposed Central Station-Anaheim (Orange County) California, dated July 26, 1960	2247	1567
No. 151—Memorandum from ADT General Superintendent, Operating Department to ADT Vice President J. A. MacDonald, captioned, Proposed Central Station, San Jose, California, dated March 24, 1959	2250	1570
No. 152—Memorandum from ADT General Superintendent of Plant W. Hable to ADT General Sales Manager L. J. O'Brien, captioned, Proposed Central Station-San Jose, California, dated March 20, 1959	2251	1571
No. 153—Memorandum from ADT District Managers to ADT General Managers, captioned Proposed Central Station-San Diego, California, dated March 4, 1959	2252	1572
No. 154—Memorandum from ADT Vice President A. E. Smith to ADT Vice President J. A. MacDonald dated August 3, 1960	2254	1575

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
GOVERNMENT'S EXHIBITS—Continued		
No. 155—Memorandum from ADT President E. Gaston to ADT Vice President J. A. MacDonald, captioned, Proposed New Central Station-San Fernando Valley-Los Angeles, California, dated July 12, 1961	2256	1576
No. 156—Memorandum from ADT Vice President A. E. Smith to ADT Vice President J.A. MacDonald, captioned Proposed New Central Station, Huntington Park, Los Angeles, dated June 3, 1952	2258	1578
No. 157—Memorandum from ADT District Managers to ADT General Managers, captioned Proposed Central Station, New Brunswick, New Jersey, dated July 13, 1959 (excerpts)	2261	1581
No. 158—Memorandum from ADT Executive Account Representative F. J. Concannon to ADT General Sales Manager L. J. O'Brien, captioned, New Central Station, Nassau County, Long Island City, N.Y., dated August 17, 1955	2264	1583
No. 159—Memorandum from ADT Vice President J. A. MacDonald to ADT General Commercial Manager A. E. Smith, captioned, Possible Establishment of Central Station at Jamaica, Long Island, dated April 14, 1952	2267	1585
No. 160—Memorandum from ADT District Managers to ADT General Managers, captioned, Proposed New Central Station, San Fernando Valley, dated July 26, 1960	2268	1587
No. 161—Memorandum from ADT District Plant Superintendent J. F. Burns to W. Hable, captioned, Proposed sub-divisions of existing Central Stations-New York District, dated December 2, 1958	2271	1592
No. 163—Memorandum from ADT Director of Diversification & Expansion J. J. Stephens to ADT Vice President A. E. Smith, captioned, Sales Potential, Westchester County, New York, dated December 20, 1957	2274	1594
No. 164—Memorandum from ADT Vice President to ADT President Gaston, captioned, Charlotte, North Carolina, dated July 6, 1960	2279	1599
No. 167—Memorandum from ADT First Vice President J. A. MacDonald to ADT Controller C. G. Eicker, captioned, Rate Development, dated July 12, 1956	2282	1602
No. 168—Memorandum by ADT Vice President J. A. MacDonald, captioned, Rate Adjustment 1959, dated November 10, 1959	2284	1605

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
GOVERNMENT'S EXHIBITS—Continued		
No. 169—Memorandum from ADT First Vice President J. A. MacDonald to ADT Vice President A. E. Smith, captioned, Minimum Basic Annual Service Charges, dated December 22, 1959	2286	1608
No. 170—Memorandum from ADT President E. Gaston to ADT First Vice President J. A. MacDonald, captioned Rate Development, dated July 11, 1956	2289	1611
No. 171—Memorandum by Holmes President H. C. Ward, entitled, Holmes Electric Protective Company of Philadelphia, Proposed 1957 Electric Protective Service Rate Revision, dated February 18, 1957 (excerpts)	2291	1612
No. 172—Memorandum by Holmes President H. C. Ward, entitled, Revision of Electric Protective Service Rates Proposed for Adoption for Mercantile and Residence Services, May 1, 1953, and for Financial Institution Service June 1, 1953, dated February 25, 1953	2296	1617
No. 173—Memorandum for File (unsigned) captioned, Projected Cash Resources and their Application, Five year Period ending December 31, 1963	2297	1619
No. 174—Memorandum from ADT District Sales Manager E. Turnbull to ADT General Sales Manager L. J. O'Brien, captioned Sales Production-Integrity of Service Charges, dated September 17, 1957	2302	1626
Exhibit Volume III		
No. 175—Contract Data Reports and Competition Reports for Albany, New York (excerpts)	2304	1629
No. 176—Contract Data Reports for Atlanta, Georgia (excerpts)	2316	1635
No. 177—Contract Data Reports and Competition Reports for Boston, Massachusetts (excerpts)	2323	1642
No. 178—Contract Data Reports for Buffalo, New York (excerpts)	2350	1665
No. 179—Contract Data Reports and Competition Reports for Chicago, Illinois (excerpts)	2368	1677
No. 180—Contract Data Reports and Competition Reports for Cincinnati, Ohio (excerpts)	2398	1700
No. 181—Contract Data Reports and Competition Reports for Cleveland, Ohio (excerpts)	2418	1716

	Original	Print
Record from the United States District Court for the District of Rhode Island—Continued		
GOVERNMENT'S EXHIBITS—Continued		
No. 182—Contract Data Reports and Competition Reports for Dallas, Texas (excerpts)	2445	1738
No. 183—Contract Data Reports and Competition Reports for Dayton, Ohio (excerpts)	2470	1755
No. 184—Contract Data Reports and Competition Reports for Denver, Colorado (excerpts)	2486	1766
No. 185—Contract Data Reports and Competition Reports for Detroit, Michigan (excerpts)	2500	1780
No. 186—Contract Data Reports and Competition Reports for Houston, Texas (excerpts)	2515	1790
No. 187—Contract Data Reports and Competition Reports for Indianapolis, Indiana (excerpts)	2527	1801
No. 188—Contract Data Reports and Competition Reports for Los Angeles, California (excerpts)	2551	1813
No. 189—Contract Data Reports for Louisville, Kentucky (excerpts)	2566	1823
No. 190—Contract Data Reports for Memphis, Tennessee (excerpts)	2576	1831
No. 191—Contract Data Reports and Competition Reports for Milwaukee, Wisconsin (excerpts)	2589	1839
No. 192—Contract Data Reports and Competition Reports for Minneapolis, Minnesota (excerpts)	2619	1855
No. 193—Contract Data Reports and Competition Reports for Newark, New Jersey (excerpts)	2632	1864
No. 194—Contract Data Reports for New Orleans, Louisiana (excerpts)	2644	1872
No. 195—Contract Data Reports and Competition Reports for New York, New York (excerpts)	2653	1879
No. 196—Contract Data Reports for Omaha, Nebraska (excerpts)	2670	1895
No. 197—Contract Data Reports and Competition Reports for Peoria, Illinois (excerpts)	2678	1901
No. 198—Contract Data Reports and Competition Reports for Philadelphia, Pennsylvania (excerpts)	2686	1906
No. 199—Contract Data Reports for Portland, Oregon (excerpts)	2696	1915
No. 200—Contract Data Reports and Competition Reports for San Francisco, California (excerpts)	2704	1922
No. 201—Contract Data Reports for Seattle, Washington (excerpts)	2710	1928
No. 202—Contract Data Reports and Competition Reports for St. Louis, Missouri (excerpts)	2720	1935
No. 203—Contract Data Reports and Competition Reports for Washington, D. C. (excerpts)	2731	1945

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
GOVERNMENT'S EXHIBITS—Continued		
No. 206—Report on ADT General Sales Meeting April 6, 7 and 8, 1955, at the New York Athletic Club	2748	1961
No. 208—Memorandum from ADT Vice President to ADT President E. Gaston, captioned, Service Charges—Proposed Revision, dated November 24, 1954	2778	2003
No. 209—Memorandum for File by ADT Vice President J. A. MacDonald, captioned, Rate Development, dated November 17, 1955	2780	2006
No. 210—Memorandum for File by ADT Vice President, J. A. MacDonald, captioned, Rate Adjustments 1959, dated November 10, 1959	2784	2012
No. 212—Directive issued by ADT Vice President A. E. Smith and Concurred in by ADT President E. Gaston to ADT District Sales Managers, captioned, Delegation of Authority, with Supplement, issued on July 1, 1960	2785	2013
No. 213—Memorandum from ADT President E. Gaston to ADT General Sales Manager L. J. O'Brien, captioned R. H. Macy, Paramus, N. J., dated December 29, 1955	2791	2020
No. 214—Memorandum from ADT Sales Representative D. M. Gates to ADT Executive Accounts Representative Alex Garton, captioned, McAlpin Company, Cincinnati, Ohio, dated April 25, 1958	2792	2021
No. 215—Memorandum from ADT Commercial Superintendent J. B. Bodley to ADT General Sales Manager A. E. Smith, captioned, Federal Engineering Co., Inc., Washington, D. C., dated November 14, 1952	2793	2022
No. 216—Memorandum from ADT General Sales Manager L. J. O'Brien to ADT District Sales Manager W. J. Robinson, captioned, Competition, Fidelity Electronics Protective Service, Pittsburgh, Pensylvania, dated March 14, 1961	2794	2023
No. 217—Memorandum from ADT District Sales Manager E. J. Heisley to ADT General Sales Manager L. J. O'Brien, captioned, National Protective Corporation, Baltimore, Maryland, dated October 27, 1960	2795	2024
No. 218—Memorandum from ADT District Sales Manager E. Turnbull to ADT General Sales Manager L. J. O'Brien, captioned, Competition—Autocall and Automatic Alarm, Minneapolis, Minnesota, dated March 13, 1959	2796	2025

	Original	Print
Record from the United States District Court for the District of Rhode Island—Continued		
GOVERNMENT'S EXHIBITS—Continued		
No. 219—Memorandum from ADT District Sales Manager J. D. Patton to ADT General Sales Manager L. J. O'Brien, captioned, Competition—Fort Worth, dated December 22, 1958	2799	2028
No. 220—Memorandum from ADT Sales Representative R. W. Rice to ADT District Sales Manager J. D. Patton, captioned, New District Account—Letellier-Phillips Paper Co., New Orleans, La., dated January 14, 1960	2800	2029
No. 221—Memorandum from ADT District Sales Manager E. J. Heisley to ADT Sales Representative L. F. Lytle, captioned, Reliable Stores Corp., Washington, D. C., dated November 22, 1960	2802	2031
No. 222—Comparative Summary of Percentages of Minimum Basic Charges Secured at each ADT central station in the United States for the years 1957 through 1961	2804	2033
No. 223—Memorandum from ADT District Sales Manager A. S. Jacks to ADT General Sales Manager L. J. O'Brien, captioned, Competition—Dayton, Ohio, Liberal Markets, Inc., dated August 8, 1961	2811	2039
No. 224—Memorandum from ADT Commercial Superintendent J. B. Bodley to ADT General Commercial Manager A. E. Smith, captioned, Federal Engineering Co., Washington, D. C., dated June 9, 1953	2813	2041
No. 225—Memorandum from ADT General Sales Manager L. J. O'Brien to ADT District Sales Manager J. K. Scott, captioned, York Professional Pharmacy, Los Angeles, California, dated July 15, 1960	2814	2042
No. 227—Memorandum from ADT District Sales Manager E. J. Heisley to ADT General Sales Manager L. J. O'Brien, captioned, Competition (rumored) Philadelphia, Pennsylvania, dated October 22, 1957	2815	2043
No. 228—ADT central station protection service Contract Forms for Watchman's Reporting and Manual Fire Alarm Service, Automatic Fire Alarm Service, Sprinkler Supervisory and Waterflow Alarm Service and Burglary and Holdup Protection Service	2818	2047
No. 229—Memorandum from ADT District Sales Manager C. L. Chafee to ADT Vice President A. E. Smith, captioned, Regional Sales Conferences and District Sales Meeting 1955, dated February 18, 1955	2822	2055

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
GOVERNMENT'S EXHIBITS—Continued		
No. 230—Memorandum from ADT Controller C. G. Eicker to ADT First Vice President J. A. MacDonald, captioned, Tampa, Florida, dated September 11, 1961	2823	2057
No. 231—Memorandum from ADT Vice President J. A. MacDonald to ADT Controller C. G. Eicker, captioned, Advance Service Charge for Sprinkler Supervisory and Waterflow Alarm Services, dated August 5, 1953	2828	2063
No. 232—Memorandum (unsigned) entitled, Charges Proposed by Commercial Department for all types of Sprinkler Supervisory and Waterflow Alarm Service and Waterflow Only Service (not dated)	2829	2064
No. 233—Memorandum from ADT Controller C. G. Eicker to ADT First Vice President J. A. MacDonald, captioned, Rate Development, dated July 18, 1958	2833	2069
No. 234—Memorandum from ADT Controller C. G. Eicker to ADT First Vice President J. A. MacDonald, captioned, Rate Development, dated August 30, 1956	2835	2070
No. 235—ADT Tabulation (unsigned) entitled, Proposed Revision in Advance Service Charges 8/28/56	2837	2074
No. 236—Annual Report of the Holmes Electric Protective Company and Subsidiaries for the year 1960 (excerpts)	2840	2075
No. 237—Memorandum from ADT Commercial Superintendent E. O. Betscher to ADT General Commercial Manager A. E. Smith, dated May 25, 1951	2845	2076
No. 238—Memorandum from ADT President E. Gaston to ADT General Sales Manager R. Brechbill, captioned, Owl Protective Company, Long Island City, N.Y., dated November 7, 1962	2847	2079
No. 239—Memorandum for File by ADT Vice President AES, captioned, Competition, Call's Police Signal Co., Chelsea, Massachusetts, dated July 26, 1956	2848	2080
No. 240—Memorandum from ADT General Sales Manager L. J. O'Brien to ADT District Sales Manager A. S. Jacks, captioned, Competition, Buffalo, New York, dated September 8, 1959	2850	2082

	Original	Print
Record from the United States District Court for the District of Rhode Island—Continued		
GOVERNMENT'S EXHIBITS—Continued		
No. 241—Memorandum from ADT District Sales Manager R. T. Warner to ADT General Sales Manager L. J. O'Brien, captioned, Cole-Hersee Company, South Boston, Massachusetts, dated September 29, 1958	2851	2082
No. 242—Memorandum from ADT Sales Representative G. V. Roach to ADT Assistant to General Sales Manager R. Brechbill, captioned, Quality Wool Quilting Corp., Astoria, New York, dated August 8, 1961	2853	2084
No. 243—Memorandum from ADT District Sales Manager E. J. Heisley to ADT Special Representative H. E. May, captioned, Bellevue Stratford Hotel and Benjamin Franklin Hotel, Philadelphia, Pa., dated September 23, 1960	2854	2085
No. 244—Memorandum from ADT Sales Representative R. F. Michiel, Sr., to ADT District Sales Manager E. Turnbull, captioned, Request for Competitive Quotation to Secure Agreement for SS & WFA with a new Subscriber, Milwaukee Forge and Machine Company, dated July 2, 1959	2855	2086
No. 245—Memorandum from ADT District Sales Manager R. T. Warner to ADT General Sales Manager L. J. O'Brien, captioned, Raymond's, Inc., South Boston, Mass., dated August 9, 1958	2857	2088
No. 246—Memorandum from AFA Commercial Representative J. J. Way to AFA Vice President L. W. Thomason, captioned, Morris Fishman & Sons, Inc., Philadelphia, Pa., dated November 13, 1957	2859	2090
No. 247—Memorandum from ADT Special Representative F. E. Miller to ADT District Sales Manager E. Turnbull, captioned, Continental Can Company, Milwaukee, Wisconsin, dated March 20, 1959	2860	2091
No. 248—Memorandum from ADT Sales Representative A. A. Balestrino to ADT District Sales Manager A. S. Jacks, captioned, Hyde Park Lumber Co., Cincinnati, Ohio, dated July 28, 1960	2862	2092
No. 250—Memorandum from ADT District Sales Manager E. J. Heisley to ADT General Manager L. J. O'Brien, captioned, Nationwide Safti Brake Co., Falls Church, Virginia, dated April 17, 1959	2863	2094
No. 251—Memorandum from ADT Sales Representative C. J. Lawson to ADT District Sales Manager D. R. Hall, dated January 14, 1958	2865	2096

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
GOVERNMENT'S EXHIBITS—Continued		
No. 252—Memorandum from ADT First Vice President J. A. MacDonald to ADT President E. Gaston, captioned, Malcolm Goldstone, Owl Protective Co., dated February 9, 1962	2866	2097
No. 253—Memorandum from ADT District Sales Manager J. K. Swanson to ADT General Sales Manager L. J. O'Brien, captioned, Wright-Bachman, Inc., Indianapolis, Indiana, dated September 11, 1961	2869	2099
No. 254—Memorandum from ADT Sales Representative W. J. King to ADT Special Representative H. E. May, captioned, Philco Distributors, Inc., Milwaukee, Wisconsin, dated February 18, 1960	2870	2100
No. 255—Memorandum from ADT Sales Representative B. W. Henke to ADT Executive Accounts Representative F. J. Concannon, captioned, American Brass Company, Cleveland, Ohio, dated April 19, 1956	2872	2101
No. 256—ADT General Instructions No. 77, entitled, Contract Procedures, issued July 11, 1960	2874	2103
No. 257—Memorandum from ADT Special Representative J. R. Norris to ADT Commercial Superintendent C. L. Chafee, captioned, National Can Corp., Cleveland, Ohio, dated July 23, 1954	2878	2110
No. 258—Memorandum from ADT Sales Representative S. J. Sievers to ADT Executive Accounts Representative H. Schultz, captioned, Foley's, Houston, Texas, dated September 22, 1960	2879	2112
No. 259—Memorandum from ADT Sales Representative J. P. Dunn to ADT National Accounts Representative F. J. Concannon, captioned, Johns-Manville Corp., Los Angeles, California, dated June 18, 1958	2880	2113
No. 260—Letter from A. F. Greenwood of Government Employees Exchange, Inc., to D. R. White, Albany Protective Service, Albany, New York, dated August 7, 1961	2881	2114
Exhibit Volume IV		
No. 261—Memorandum from ADT Manager, Field Service Division, R. Brechbill to ADT General Manager of Sales Production L. J. O'Brien, captioned, Procter & Gamble Company, Cincinnati, Ohio, Cleveland District National Account, dated September 1, 1955	2882	2115

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
GOVERNMENT'S EXHIBITS—Continued		
No. 264—Memorandum from ADT Sales Representative J. D. Patton to ADT Executive Accounts Representative F. J. Concannon, captioned, Franklin's, Dallas, Texas, dated December 12, 1956	2884	2117
No. 265—Memorandum by ADT Vice President A. E. Smith to File, captioned, Renewal Agreement, R.K.O. Pictures, Los Angeles, California, dated June 29, 1956	2885	2118
No. 266—Memorandum from ADT District Sales Manager R. T. Warner to ADT General Sales Manager L. J. O'Brien, captioned, The Van Heusen Charles Co., Albany, New York, dated June 25, 1959	2886	2119
No. 267—Memorandum from ADT Special Representative H. E. May to ADT Executive Accounts Representative F. Concannon, captioned, American Sugar Refining Company, Philadelphia, Pennsylvania, dated December 12, 1961	2887	2120
No. 268—Contract agreement for Alarm Engineering Service of the Dayton Electronics Alarm and Signal Co., 530 West Second Street, Dayton 2, Ohio	2889	2121
No. 269—Memorandum from ADT Special Representative H. E. May to ADT Executive Accounts Representative F. J. Concannon, dated January 18, 1960 (excerpts)	2891	2123
No. 270—Memorandum from ADT Special Representative H. E. May to ADT Sales Representative F. Shadell, captioned, Swern & Company-Lit Brothers, Trenton, dated January 5, 1962	2897	2124
No. 271—Memorandum from ADT District Sales Manager E. J. Heisley to ADT General Sales Manager L. J. O'Brien, captioned, City Stores, Inc., Philadelphia, Pa., dated January 19, 1960	2898	2125
No. 275—Memorandum from ADT District Sales Manager L. M. De Shane to ADT General Sales Manager L. J. O'Brien, captioned, Ralston Purina Company, Various Locations, U.S.A., dated March 4, 1957	2901	2128
No. 276—Annual Report of the American District Telegraph Company for Fiscal Year 1953 (excerpts)	2903	2129

	Original	Print
Record from the United States District Court for the District of Rhode Island—Continued		
GOVERNMENT'S EXHIBITS—Continued		
No. 277—Letter from ADT Vice President J. A. MacDonald to Grinnell Secretary and Counsel R. T. Clapp, dated July 2, 1953	2915	2132
No. 278—ADT General Circular No. 222, entitled, Direct-Connected Fire and Burglar Alarm Service, signed by ADT Vice President A. E. Smith, dated April 27, 1955	2918	2135
No. 279—Memorandum from ADT General Commercial Manager A. E. Smith to ADT Commercial Superintendent C. L. Chafee, captioned, Competition—Automatic Fire Alarm Systems, Columbus, Ohio, dated March 9, 1953	2924	2149
No. 280—Memorandum from ADT Assistant Director of Public Relations R. M. Bugbee to ADT Director of Public Relations A. W. Sullivan, captioned, Proposed Ordinance—City of Newark, dated December 20, 1962	2928	2153
No. 281—Memorandum from ADT District Sales Manager E. J. Heisley to ADT General Sales Manager L. J. O'Brien, captioned, Competition, Atlanta, Georgia, dated September 15, 1955	2934	2157
No. 282—Memorandum from ADT Assistant Commercial Superintendent, W. K. Francis to ADT General Commercial Manager A. E. Smith, captioned, Regional Conferences, June 4-6 and 18-20, 1953, Competition District No. 9, dated June 9, 1953 (excerpts)	2936	2159
No. 283—Memorandum by Holmes Sales Manager, C. K. Empringham to File, captioned, Malcolm Goldstone, Central Office Alarm Company, dated April 5, 1962	2941	2163
No. 284—Letter from Holmes President H. C. Ward to Grinnell Secretary and Counsel R. T. Clapp, dated September 25, 1952	2942	2164
No. 285—Memorandum from ADT General Commercial Manager A. E. Smith to ADT Commercial Superintendents, captioned, Proprietary Systems, dated October 5, 1963 (excerpts)	2949	2171
No. 286—ADT Pamphlet reporting on ADT Protection Service for 1960 (excerpts)	2965	2173
No. 287—Memorandum from ADT First Vice President J. A. MacDonald to ADT President E. Gaston, dated June 6, 1957	2970	2178

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
Government's Exhibits—Continued		
No. 288—Minutes of Meeting of the Burglary Rating Committee of the National Bureau of Casualty Underwriters, April 25, 26, 27, 1950	2972	2181
No. 289—Letter from Holmes President H. C. Ward to Grinnell Secretary & Counsel R. T. Clapp, dated October 10, 1952	2974	2184
No. 291—ADT Leaflet entitled, Astute Business Executives are Constantly Proving that it Pays 2 Ways to Protect Property Automatically, Better Protection and Lower Cost	2977	2187
No. 292—Memorandum from ADT Associate Director of Diversification & Expansion G. E. Friedli to ADT Director of Diversification & Expansion J. J. Stephens, captioned, San Jose Peninsula Survey, dated November 28, 1956	2978	2189
No. 294—Memorandum from ADT Commercial Superintendent C. L. Chafee to ADT General Commercial Manager A. E. Smith, captioned, Competition—Cincinnati, Ohio, dated September 2, 1954	2981	2191
No. 295—Memorandum from ADT President E. Gaston to ADT Vice President A. E. Smith, captioned San Diego, California, dated October 25, 1957	2982	2192
No. 296—ADT Acquisition Agreement of the United Electric Service Company, New York, New York, dated July 21, 1931 (excerpts)	2983	2193
No. 297—ADT Acquisition Agreement of the Auxiliary Fire Alarm & Telegraph Co., Philadelphia, Pennsylvania, dated March 26, 1930 (excerpts)	2986	2194
No. 298—AFA central station protection Service Contract forms	2995	2199
No. 299—Memorandum from AFA Vice President F. D. Chase to AFA President T. P. Drew, captioned, Competition, dated September 4, 1958	2998	2203
No. 300—Memorandum from ADT Sales Representative J. J. Viscarde to ADT Assistant to General Sales Manager J. B. Bodley, captioned, Ivers-Lee, Newark, New Jersey, dated June 16, 1960	3000	2205
No. 302—Memorandum from ADT Government and Special Sales Division Manager J. O. Maxey to ADT General Sales Manager L. J. O'Brien, captioned, Competition, Owl Protective Company, New York, New York, dated May 17, 1960	3001	2206

	Original	Print
Record from the United States District Court for the District of Rhode Island—Continued		
GOVERNMENT'S EXHIBITS—Continued		
No. 303—ADT Leaflet, entitled, Municipalities Served by ADT Central Stations	3003	2208
No. 304—List of Approved Central Station Protection Service Companies which were listed by Underwriters Laboratories, Inc., on December 31, 1961	3007	2216
No. 305—Underwriters Laboratories, Inc. list of approved central station protection companies with the effective listing date	3011	2222
No. 306—Letter from A & P Transport, Inc., President E. G. Snow to Joseph Forman, Call's Police Signal Corporation, Chelsea, Massachusetts, dated July 9, 1959	3018	2228
No. 307—Holmes central station protection service contract forms	3019	2229
No. 308—Stipulation No. 1, Stipulation as to the authority of the documents offered into evidence by Plaintiff	3022	2235
No. 309—Stipulation No. 2, Stipulation as to the volume of commerce across State and District of Columbia lines	3058	2260
No. 310—Stipulation No. 3, Relative market position of central station protection service companies in Underwriters Laboratories, Inc., Certificated central station burglar alarm service	3062	2263
No. 311—Stipulation No. 4, Relative market position of alarm companies in Underwriters Laboratories, Inc., certificated local burglar alarm service	3064	2264
No. 312—Stipulation No. 5, Relative market position of central station protection service companies in the approved station protection service business in the United States	3067	2266
No. 313—Designation of answers of the American District Telegraph Company to interrogatories propounded by Plaintiff (excerpts)	3082	2279
No. 314—Designation of answers of the Holmes Electric Protective Company to interrogatories propounded by Plaintiff	3110	2301
No. 315—Designation of answers of the Automatic Fire Alarm Company of Delaware to interrogatories propounded by Plaintiff	3129	2318
No. 316—Designation of answers of the Grinnell Corporation to interrogatories propounded by Plaintiff	3149	2337
No. 317—Excerpts of deposition testimony of George F. Allebach, Sr., Insurance Rating Bureau of the District of Columbia	3167	2353

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
GOVERNMENT'S EXHIBITS—Continued		
No. 318—Excerpts of deposition testimony of Emerson M. Booher, Dayton Electronics Alarm & Signal, Inc.	3238	2392
No. 319—Excerpts of deposition testimony of James H. Bray, Alarm Signal Company of Texas	3284	2418
No. 320—Excerpts of deposition testimony of John D. Brosnan, Federal Engineering Company, Inc.	3315	2432
No. 323—Excerpts of deposition testimony of Eugene Curran, Robinson Protective Alarm Company	3439	2488
No. 324—Excerpts of deposition testimony of Clarence S. Damon, Damon Alarm Corporation	3457	2497
No. 325—Excerpts of deposition testimony of Clifford T. Davis, Protection Engineering Corp.	3498	2517
No. 326—Excerpts of deposition testimony of James W. Flotron, Potter Electric Signal Co.	3550	2545
No. 328—Excerpts of deposition testimony of Joseph Forman, Owl Protective Company, General Burglar Alarm Company	3723	2627
Exhibit Volume V		
No. 329—Excerpts of deposition testimony of Malcolm Goldstone, Central Office Alarm Company, Inc.	3778	2647
No. 330—Excerpts of deposition testimony of Malcolm Goldstone, Owl Protective Company, General Burglar Alarm Company	3895	2705
No. 331—Excerpts of deposition testimony of Harold W. Gray, American Burglar Alarm Co. (Pacific Extinguisher Co.)	3955	2735
No. 333—Excerpts of deposition testimony of Sarah E. Jackson, Denver Burglar Alarm Company	4043	2786
No. 334—Excerpts of deposition testimony of Edward J. Lavino, Sentinel Alarm Corporation	4142	2841
No. 336—Excerpts of deposition testimony of Thomas M. Lewin, Automatic Alarm Corporation	4170	2854
No. 337—Excerpts of deposition testimony of Gerald J. Linder, American Fire Dispatch, Inc.	4233	2879
No. 338—Excerpts of deposition testimony of Thomas L. Lugen, Fidelity Electronic Protective Service	4253	2888

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
GOVERNMENT'S EXHIBITS—Continued		
No. 339—Excerpts of deposition testimony of James H. McDowell, Central Station Signals, Inc.	4280	2897
No. 340—Excerpts of deposition testimony of Kenneth S. McFarlan, Jr., Republic Alarm Company	4341	2919
No. 341—Excerpts of deposition testimony of Peter J. Neumann, Albany Protective Service	4389	2933
No. 342—Excerpts of deposition testimony of Ephraim B. Oberlander, Protection Alarms, Inc.	4414	2943
No. 343—Excerpts of deposition testimony of Arthur T. Orner, Morse Signal Devices, Inc.	4461	2961
No. 345—Excerpts of deposition testimony of Shelton Phillips, Potter Electric Signal Company of Ohio	4501	2974
No. 346—Excerpts of deposition testimony of Donald D. Pillsbury, National Bureau of Casualty Underwriters	4527	2980
No. 347—Excerpts of deposition testimony of Henry J. Poile, Kedzie-Kane Alarm Co.	4558	3004
No. 348—Excerpts of deposition testimony of Charles C. Porch, Factory Mutual Rating Bureau	4599	3019
No. 349—Excerpts of deposition testimony of Walter W. Richardson, American Alarm Company, Inc.	4621	3027
No. 351—Excerpts of deposition testimony of James E. Rose, Michigan Still Alarm Co.	4647	3035
No. 352—Excerpts of deposition testimony of George W. Saunders, Underwriters Laboratories	4730	3069
No. 355—Excerpts of deposition testimony of George A. Smith, Smith Detective Agency & Nightwatch Service	4755	3079
No. 356—Excerpts of deposition testimony of Maurice G. Sondock, McCane-Sondock Detective Agency	4796	3102
No. 357—Excerpts of deposition testimony of Sidney Stackler, Central Watch Service	4819	3113
No. 358—Excerpts of deposition testimony of Lee C. Underdown, Central Alarm Company	4924	3152
No. 359—Excerpts of deposition testimony of Lyle and Joe Underdown, Central Alarm Company	4934	3159
No. 360—Excerpts of deposition testimony of Alex Venners, Federal Engineering Company, Inc.	4950	3169

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
GOVERNMENT'S EXHIBITS—Continued		
No. 361—Excerpts of deposition testimony of Ira E. Warlick, Reliance Protective, Inc.	4984	3185
No. 362—Excerpts of deposition testimony of Morris F. Weinstock, Morse Signal Devices of California	5004	3198
No. 363—Excerpts of deposition testimony of Samuel G. Wight, Central Alarm Company, Ltd.	5077	3229
DEFENDANTS' EXHIBITS		
A—Schedule of Defendant alarm companies proposed objections to plaintiff's documents—For identification	5100	3242
B—Defendant Grinnell objections to Government documents—For identification	5104	3245
E-1—Minimum basic service charges effective January 1, 1960	5105	3246
E-2—Minimum basic advance service charges effective April 1, 1962	5107	3249
F—Form 701 dated August 1962	5109	3251
G—Form 400 dated February 1963	5110	3252
H-1—Summary in tabular form of contents of Exhibit H—Vocational Listing of Subscribers	5111	3253
Exhibit Volume VI		
I—Letter from L. J. O'Brien to C. L. Chafee, dated September 12, 1955 re: Procter & Gamble Company, Cincinnati, Ohio	5126	3270
F—68-80—Twelve tabulated exhibits and one list of book cities dated October 1, 1962 admitted at completion of testimony of Edward Gaston	5128	3273
J—Summary statement of local alarm accounts in five cities, based on Form 400	5446	3591
K—List of city of Everett, Massachusetts master boxes	5484	3629
L—List of city of Lynn, Massachusetts Police Department connections, (acting Chief George W. Donnelly), dated June 16, 1964	5486	3631
M—List of Everett, Massachusetts Police Station connections (Bradford V. Elliott, Chief of Police), dated June 16, 1964	5488	3632
N—List of master boxes and heat detection connections, Braintree, Massachusetts, Fire Department Headquarters	5489	3633
O—List of Braintree, Massachusetts, Police Department connections	5496	3638

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
DEFENDANTS' EXHIBITS—Continued		
P—List of auxiliary connections in the Fire Department, Lynn City, Massachusetts	5498	3639
Q—List of Weymouth Fire Department direct connected and auxiliary alarm connections	5500	3640
R—List of Brockton Municipal connections, dated December 31, 1963	5502	3643
S—List of Boston Municipal connections, dated January 7, 1963	5503	3644
T—List of Salem Municipal connections, dated January 8, 1964	5504	3645
U—List of U.S. Government contracts (not security classified), December 31, 1963	5505	3647
V—Area list of Government installations, Continental United States, January 1, 1964	5547	3666
W(a)—List of ADT central station SS&WF subscribers in Natick, Needham and Newton, Massachusetts	5549	3667
Z-1—ADT contract form for modified central station service	5550	3669
Z-2—ADT contract form for central station protective signalling service	5552	3673
Z-3—ADT contract form for central station burglary and holdup protection service	5554	3677
Z-4—ADT contract form for direct connected service	5555	3679
Z-5—ADT contract form for local alarm service	5556	3681
K-1—ADT contract form for local alarm service (customer owned system)	5557	3683
L-1—List of representative installations made by ADT using systems and equipment made by others	5558	3685
M-1—List of representative systems installed by others, and sold outright to subscriber, where ADT was called in to restore service, and/or to provide a central station connection	5559	3685
U-1—Letter from Stanley N. Barnes, Assistant Attorney General, Antitrust Division to Frank A. Fritz, dated July 14, 1955	5560	3686
V-1—Statement of (ADT) Company's Revenues, gross and net balance sheet assets and indicated ratios, 1959 to 1963	5561	3687
W-1—Ratio of net earnings to gross assets, net assets and net worth (ADT), 1947 to 1963	5562	3688
X-1—Commercial Circular No. 197, supplement No. 21, dated July 25, 1960, from L. J. O'Brien regarding outright sales prices marked "Confidential"	5563	3689

Record from the United States District Court for the District of Rhode Island—Continued

DEFENDANTS' EXHIBITS—Continued	Original	Print
Y-1—List of offices showing annual and advance service charges secured in excess of minimum basic rates, 1957 to 1962	5564	3690
Z-1—Letter from L. J. O'Brien to J. A. MacDonald, dated August 16, 1960 re Pricing Policy Memorandum from ADT Special Representative J. R. Norris to ADT Commercial Superintendent C. L. Chafee, captioned National Can Corp., Cleveland, Ohio, dated July 23, 1954 (copy) (omitted in printing)	5572 5579	3696 3704
LL—Price Waterhouse & Company letter dated May 27, 1964 to The Board of Directors of ADT with Appendices A, B & C	5580	3705
MM(1-20)—Table of detailed financial data on a city-to-city basis regarding divestiture	5589	3717
NN—Statement of revenue and expenses—1963, New Orleans central station (ADT)	5674	3805
OO—Statement of revenue and expenses—1963, Richmond central station (ADT)	5675	3807
PP—Summary of ADT deficit offices in 1963	5676	3809
QQ—Analysis of advance service charges, city by city, 1957 to 1963	5677	3811
RR—List of advance service charges amortized on a city-to-city basis. Detail of Reply to Government Interrogatory No. 17	5700	3833
SS—Memorandum of J. A. MacDonald dated June 17, 1952 regarding discussions with Grinnell Corporation on June 16, 1952	5705	3839
UU—ADT Board of Directors minutes of June 11, 1952 (excerpts)	5710	3846
VV—Excerpts of ADT Board of Directors minutes for July 9, 1952	5712	3848
WW—Arthur D. Little, Inc. report on U.S. Market for electric protection services, 1961 to 1962	5724	3863
WW-1—Biographical summaries of Messrs. Gottlieb, Frankel & Peters	5806	3947

Exhibit Volume VII

XX—Interview guide used in conjunction with Arthur D. Little, Inc. survey	5809	3951
YY—Two Sanborn maps of Dubuque, Iowa	5813	3955
ZZ—Interviewer's materials relating to survey of of Dubuque, Iowa—Audit & Surveys, Inc., Forms 1, 2, 3, 4 & 5, Job #1232	5815	3957
AB—Q4 by Q23, amount of square feet occupied—this tabulation is related to Exhibit ZZ. Job #1232	5853	3991

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
DEFENDANTS' EXHIBITS—Continued		
AC—Q4 by Q24, number of employees—this tabulation is related to Exhibit ZZ. Job #1232	5854	3992
AD—Q4 by type of business establishment, types of establishments—this tabulation is related to Exhibit ZZ. Job #1232	5855	3993
AE—Letters from L. J. O'Brien to District Sales Managers, dated April 4, 1956; December 2, 1957; August 7, 1959; August 29, 1960; November 23, 1960; re Form 701	5856	3995
AF—General Services Administration correspondence from September 20, 1962 to January 2, 1963	5861	3998
C-1—C-5—Defendant Alarm Companies objections to plaintiff's designations of deposition testimony	5893	4029
DEFENDANT GRINNELL CORPORATION'S EXHIBITS		
J-2—1950 Annual Report of the Grinnell Corporation	5899	4050
J-5—1953 Annual Report of the Grinnell Corporation	5912	4064
J-39—Index to Grinnell Corporation Catalog, dated 1960	5923	4075
J-40—AFA Company Balance Sheet, dated December 31, 1948	5936	4110
J-43—Agreement dated February 28, 1949 between Grinnell Corp. and Marine Midland Trust Co. of New York	5938	4111
J-44—Minutes of the Executive Committee of the Board of Directors, Grinnell Corp., March 23, 1949 (excerpts)	5941	4113
J-45—Letter from W. G. Hampton, Assistant Vice President, New York Telephone Co. to J. D. Fleming, President Grinnell Corp., dated February 20, 1950	5943	4114
Income statements of Holmes Electric Protective Company for the years 1921-1949	5944	4117
J-47—Agreement dated April 14, 1950 between New York Telephone Co. and Grinnell Corp.	5946	4120
J-48—Closing Memorandum (undated)	5996	4158
J-49—Letter from W. J. Klickhauf, Apple-Cole Co., to J. D. Fleming, dated May 4, 1953	6001	4163
J-50—Agreement dated June 16, 1953 between Western Union Telegraph Co. and Grinnell Corp. with Exhibits A-E	6002	4164
J-51—Loan Agreement, dated July 27, 1953 between Grinnell Corp. and the Equitable Life Assurance Society (excerpts)	6035	4199

Record from the United States District Court for the District of Rhode Island—Continued

DEFENDANT GRINNELL CORPORATION'S EXHIBITS—Continued

	Original	Print
J-52—Letter from Stanley N. Barnes, Assistant Attorney General to J. D. Fleming, dated June 29, 1953	6052	4205
J-53—Letter from Roger T. Clapp to W. D. Gaillard, Jr., Milbank, Tweed, Hope & Hadley, dated July 2, 1953	6054	4206
J-54—Letter from Roger T. Clapp to M. J. Bloomer, Jr., Wickes, Riddell, Bloomer, Jacobi & McGuire, dated July 2, 1953	6055	4207
J-55—Letter from Stanley N. Barnes, Assistant Attorney General to Frank A. Fritz, dated July 23, 1953	6057	4208
J-56—Letter from Frank A. Fritz to Ephraim Jacobs, Department of Justice, Antitrust Division, dated July 13, 1953	6058	4209
J-59—Memo dated July 24, 1950 from Roger T. Clapp to Department Managers, Fire Protection Division	6063	4212
J-60—Memo dated June 10, 1963 from Roger T. Clapp to Department Managers, Fire Protection Division	6064	4214
J-62—Memo dated February 20, 1954 from O. L. Swats, Manager, Fire Protection Division to Department Managers, Contracting Engineers, et al.	6065	4215
J-65—Memo dated April 21, 1950 from H. C. Ward to All Holmes Employees	6066	4216
J-66—Letter from J. A. MacDonald to Roger T. Clapp dated June 24, 1953	6068	4218
J-69—Memorandum of Material for Discussion with Messrs. Gaston and MacDonald on June 16	6070	4219
J-70—Letter from Bleakley, Platt, et al. to the Equitable Life Assurance Society, dated July 23, 1953	6076	4226
J-74—Minutes of a special meeting of the Board of Directors of the Grinnell Corporation dated June 2, 1953	6077	4227
J-75—Statement showing "1928-1937 Earnings Data"—Grinnell Corporation	6079	4229
J-75(1)—General Fire Extinguisher Co.—Report of the Treasurer To The Board of Directors for Twelve Months Ended December 31, 1928 (excerpts)	6080	4230
J-75(2)—Ended December 31, 1929 (excerpts)	6087	4238
J-75(3)—Ended December 31, 1930 (excerpts)	6094	4246
J-75(4)—Ended December 31, 1931 (excerpts)	6101	4254

Record from the United States District Court for the District of Rhode Island—Continued

DEFENDANT GRINNELL CORPORATION'S EXHIBITS—Continued

	Original	Print
J-75(5)—Ended December 31, 1932 (excerpts)	6114	4262
J-75(6)—Ended December 31, 1933 (excerpts)	6125	4270
J-75(7)—Ended December 31, 1934 (excerpts)	6134	4277
J-75(8)—Ended December 31, 1935 (excerpts)	6143	4285
J-75(9)—Ended December 31, 1936 (excerpts)	6154	4293
J-75(10)—Ended December 31, 1937 (excerpts)	6163	4301
J-76—Plaintiff's Answers to Certain Interrogatories of Alarm Company Defendants	6172	4309
Appendix A—Letter from Stanley N. Barnes, Assistant Attorney General to Frank A. Fritz, dated July 23, 1953 (copy) (omitted in printing)	6187	4318
Appendix B—Letter from Stanley N. Barnes, Assistant Attorney General to J. D. Fleming, dated June 29, 1953 (copy) (omitted in printing)	6188	4318
Appendix C—Letter from Frank A. Fritz to Ephraim Jacobs, Department of Justice, Antitrust Division, dated July 13, 1953 (copy) (omitted in printing)	6190	4318
J-77—Balance sheet and income statements of AFA as of June 30, 1948	6195	4319

DEFENDANT ADT'S EXHIBITS

A9—Memo dated December 15, 1952 from J. L. Hardesty to H. R. Eakin, Plant Superintendent, captioned Competition—Washington, D. C.	6201	4323
—Memo dated December 22, 1952 from J. B. Bodley to A. E. Smith captioned "Federal Engineering Co., Inc., Washington, D. C.	6202	4324
A13—Memo dated September 29, 1953 from A. E. Smith to J. A. MacDonald captioned Westchester County	6203	4324
—Memo dated September 14, 1951 from W. J. Doyle, Commercial Superintendent, to A. E. Smith, captioned Modified Central Station Burglar Alarm Service	6206	4326
A31—Letter dated March 23, 1959 from Jamie Bray, Alarm Signal Company of Texas to Frank E. Guibert	6209	4331
A36—Handwritten letter dated June 2, 1962 from T. E. Smith to Mr. Haberman captioned Competition, San Antonio, Texas—Texas Industrial Surveys	6212	4334

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
Defendant ADT's Exhibits—Continued		
A37—Letter dated October 18, 1955 from J. K. Scott to A. S. Cook, Manager, captioned Riverside Protective Association, Houston 9, Texas	6214	4335
A38—Letter dated October 1, 1959 from R. F. Ethridge to R. T. Warner, captioned The Polaroid Company, Dallas, Texas	6215	4336
A39—Letter dated June 22, 1959 from S. W. Christian to J. B. Rustic, captioned Competition—El Paso	6216	4337
A40—Letter dated March 15, 1960 from J. D. Patton to L. J. O'Brien, captioned Competition	6217	4338
A41—Letter dated December 11, 1956 from C. A. Southard to J. K. Scott, captioned Scobey Fireproof Storage Company, San Antonio, Texas	6218	4338
A47—Memo dated November 2, 1959 from J. B. Bodley to E. J. Heisley, captioned Competitive Fire-Alarm System, Pittsburgh, Pa.	6219	4340
A49—Memo dated November 20, 1962 from Jake Kowalyk to W. J. Robinson, captioned Competition—Pittsburgh	6220	4341
A51—Memo dated March 12, 1956 from W. J. Dahl to L. J. O'Brien captioned Boeing Airplane Company, Seattle, Washington, Conversion	6223	4344
A52—Letter dated March 14, 1956 from T. I. Young to W. J. Dahl, re: Boeing Airplane Company, Seattle, Washington, Conversion	6224	4345
A53—Memo dated January 30, 1956 from J. J. Stephens to J. A. MacDonald, captioned Direct Connected Services, Competition and Compensation	6225	4345
A54—Memo dated February 15, 1956 from R. M. Bugbee to A. W. Sullivan, captioned Gamewell Competitions, Indiana	6229	4350
A55—Memo dated October 10, 1955 from A. W. Sullivan to L. J. O'Brien, captioned Competition, Kenosha, Wisconsin	6230	4351
A57—Memo dated July 30, 1955 from R. V. Haight to H. B. Schultz	6231	4352
A61—Letter dated January 4, 1954 from E. J. Heisly to A. E. Smith, re: Wurzburg Bros., Memphis, Tenn. (Factory Mutuals)	6232	4353
A62—Memo dated September 24, 1953 from J. Heath, Jr., to E. B. White, re Los Angeles and Salt Lake Railways, Los Angeles 23, California	6233	4354

	Original	Print
Record from the United States District Court for the District of Rhode Island—Continued		
DEFENDANT ADT'S EXHIBITS—Continued		
A63—Memo dated March 20, 1953 from W. B. O'Hara to D. E. Kloster, re: Erie Resistor Corp., Erie, Pa.	6234	4355
A64—Memo dated February 12, 1953 from O. T. Blank to F. J. Concannon, re: Benjamin Moore Co., Denver, Colorado	6235	4356
A66—Memo dated March 6, 1952 from E. A. Rogers, Jr. to A. S. Cook, re: Competition, Wild & Stevens, Inc., Needham Street, Newtonville, Mass.	6236	4357
A67—Memo dated October 2, 1952 from N. Slavin to A. S. Cook, re: Hotels Statler Company, Hartford, Connecticut	6237	4359
A68—Memo dated April 7, 1952 from D. R. Hall to A. S. Cook, re: Ford Motor Company, Natick, Mass.—Compulsory Tour Service	6238	4359
A70—Memo dated January 18, 1952 from D. R. Hall to W. R. Boos, re: Ford Motor Company, Edgewater, New Jersey	6239	4361
A71—Memo dated September 5, 1951 from E. J. Heisley to A. E. Smith, re: Union Bag and Paper Company, Savannah, Georgia	6240	4362
A77—Memo dated August 11, 1955 from J. B. Bodley to L. J. O'Brien captioned Competition—Richmond, Virginia	6241	4363
—Memo dated August 8, 1955 from R. O. Beckham to J. B. Bodley entitled Competition—Richmond, Virginia	6242	4364
A78—Memo dated June 1, 1953 from T. J. Yocom to E. B. White entitled Competition Report	6244	4365
A79—Memo dated July 1, 1959 from Ray Brechbill to Lyle Straus entitled Competition—Fort Worth	6246	4366
A82—Memo dated March 18, 1955 from W. J. Doyle to J. A. Webb, re: The Jamison Plastic Corporation, North Bellmore, Long Island, N.Y.	6245	4367
A84—Memo dated October 10, 1952 from G. J. Simon to John Hannon entitled Beth Israel Hospital, New York City	6247	4368
A85—Memo dated December 9, 1952 from W. J. Doyle to C. S. Hammergren re: Beth Israel Hospital, New York, N.Y.	6248	4369
A86—Memo dated April 8, 1957 from W. R. Boos to W. J. Doyle re: Duro-Test Corp., Secaucus, New Jersey	6249	4370

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
DEFENDANT ADT'S EXHIBITS—Continued		
A89—Memo dated July 29, 1958 from C. H. Sanders to W. J. Doyle re: Globe Products Co., Inc., Webro Road, Clifton, New Jersey	6250	4371
A95—Memo dated August 6, 1951 from A. E. Smith to John Hannon captioned Auxiliary Fire Alarm Service, Trenton, New Jersey	6252	4373
A98—Memo dated January 5, 1952 from M. E. Hubert to W. W. Dooley, captioned First National Bank, Omaha, Nebraska	6253	4374
B8—Memo dated March 21, 1961 from A. S. Jacks to L. J. O'Brien captioned Competition, Erie, Pennsylvania	6254	4375
B9—Memo dated November 21, 1960 from J. J. Caffrey to L. J. O'Brien captioned Competitive Advertising	6256	4376
B11—Memo dated May 19, 1959 from R. J. Dellinger to A. S. Jacks re: Gamewell Competition—Erie, Pennsylvania	6260	4379
B12—Memo dated March 7, 1959 from R. J. Dellinger to A. S. Jacks re: Gamewell Company	6262	4381
B13—Memo dated May 17, 1959 from R. M. Bugbee to A. S. Jacks re: Gamewell Competition—Erie, Pennsylvania	6263	4382
B17—Memo dated May 5, 1958 from F. T. Turner to J. B. Rustic captioned "Auxiliary Fire Alarm Systems—City of Pittsburgh, Pennsylvania"	6264	4383
B18—Memo dated April 11, 1958 from R. T. Warner to L. J. O'Brien captioned "Olin Mathieson Chemical Corp., New Haven, Conn."	6266	4385
B19—Memo dated March 28, 1958 from W. J. Dahl to A. W. Sullivan captioned Competition—Fire Alarm Service, City of Portland, Oregon, Auxiliary Fire Alarm Systems connected to Municipal Circuits	6269	4387
B20—Memo dated March 25, 1958 from H. E. Peters to A. S. Jacks captioned Competition	6271	4389
B21—Memo dated October 15, 1957 from "District Sales Manager" (RTW) to L. J. O'Brien, captioned Insurance Relations—FIA and FM	6273	4390
B24—Memo dated June 7, 1956 from G. B. Fosmire to C. L. Chafee, captioned Competition—Columbus, Ohio	6275	4392
B30—Memo dated September 24, 1954 from D. M. Gates to C. L. Chafee	6277	4393

Record from the United States District Court for the District of Rhode Island—Continued	Original	Print
DEFENDANT ADT'S EXHIBITS—Continued		
B33—Memo dated September 15, 1954 from J. A. MacDonald to A. W. Sullivan entitled Notifier Mfgs. Co.	6278	4395
B34—Memo dated September 10, 1954 from L. J. O'Brien to J. A. MacDonald re Competition—Notifier Alarm Co.—Spurling Automatic Fire Alarm Co.	6279	4396
B38—Memo dated August 30, 1954 from R. L. Hopf to C. L. Chafee re Competition—Spurling & Notifier	6280	4397
B40—Memo dated June 8, 1954 from Oper. Supt. (DHB) to J. B. Rustic, re Competition—Lincoln, Nebraska	6281	4398
B92—Memo dated September 18, 1952 from R. M. Bugbee to A. E. Smith, re Atmo Competition—New Haven, Conn.	6284	4400
B94—Letter from "Koos Bros." signed by George O. Klemp to B. W. Fox, Anchor Motor Freight-New York Corp., Linden, New Jersey, dated August 15, 1952	6286	4402
B95—Memo dated September 24, 1952 from A. F. Clunan to W. J. Doyle, re Competition—Atmo, Linden Investment Co., Linden, New Jersey	6287	4403
C1—Memo dated May 14, 1951 from R. M. Bugbee to A. S. Cook re Atmo Competition, New Haven, Connecticut	6288	4404
C3—Memo dated July 22, 1957 from J. B. Bodley to O. E. Betscher, captioned M. H. Connell Associates, Miami, Florida	6289	4405
C4—Memo dated July 27, 1962 from C. C. Rasmussen, Jr. to W. J. Robinson, re *"United States* v. *Grinnell Corp. et al."*	6290	4406
C8—Memo dated July 11, 1952 from R. M. Pinio to B. H. Sofge re Ace Burglar Alarm Company, Hartford, Connecticut	6291	4407
C10—Memo dated July 7, 1952 from K. E. Berrett to R. M. Pineo, re Ace Burglar Alarm Company, Hartford, Connecticut	6292	4408
C13—Memo dated July 1, 1960 from D. H. Barnett to L. J. O'Brien re "Proposed Councilmen's Bill, Denver, Colorado"	6293	4409
C14—Memo dated November 29, 1954 from "Vice President" to L. J. O'Brien re Denver Ordinance	6296	4412
C15—Copy of Ordinance allowing Denver Banks to install direct connect alarms, Series of 1954	6298	4414

Record from the United States District Court for the District of Rhode Island—Continued

DEFENDANT ADT'S EXHIBITS—Continued	Original	Print
C21—Memo dated December 18, 1952 from W. K. Francis to E. B. White re Competition—Tele-Fire of California, Pasadena, California	6301	4417
C22—Memo dated April 17, 1953 from J. Heath, Jr. to E. B. White re competition—Fullerton Mutual Orange Ass'n., Inc., Fullerton, California	6304	4421
C26—Memo dated April 11, 1958 from W. K. Francis to L. J. O'Brien, entitled Competition—Sacramento, California	6305	4422
C31—Memo dated August 28, 1962 from W. J. Kupper to Ray Brechbill, re District #13—Sales Integrity and Competition	6306	4423
C32—Memo dated June 16, 1954 from W. K. Francis to E. B. White re Sears, Roebuck & Company, Tucson, Arizona	6315	4432
C33—Memo dated April 29, 1957 from J. A. MacDonald to J. B. Rustic, re Competition—Spurling Fire Alarm & Indicator Co., Louisville, Kentucky	6317	4434
C34—Memo dated December 21, 1956 from W. J. O'Meara to E. O. Betscher, re Yellowstone Distillery, Inc., Shively, Kentucky	6318	4435
C35—Memo dated November 30, 1956 from E. O. Betscher to L. J. O'Brien, re Competition—Spurling Fire Alarm & Indicator Company, Louisville, Kentucky	6319	4436
C36—Memo dated September 12, 1956 from J. B. Bodley to E. O. Betscher, re Competition—Spurling Fire Alarm & Indicator Company, Louisville, Kentucky	6321	4439
C40—Memo dated September 7, 1955 from A. A. Balestrino to C. C. Chafee re Competition—Cincinnati, Ohio	6323	4440
C41—Memo dated September 10, 1954 from R. L. Hopf to C. L. Chafee re Competition—Direct Connect to Fire Tower	6324	4442
Agreement between the City of Cincinnati and Spurling granting direct connect permission, dated August 6, 1954	6325	4443
C42—Memo dated September 17, 1953 from E. J. Heisley to A. W. Sullivan, re Auxiliary & Direct Connect Competition, Charleston, South Carolina	6326	4445
C49—Memo dated March 4, 1960 from D. R. Hall to R. T. Warner, re GMC, New Departure Division, Bristol, Connecticut	6328	4448

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
DEFENDANT ADT'S EXHIBITS—Continued		
C53—Memo dated May 6, 1958 from R. G. Dodd to L. M. DeSchane re: Mid-West Conveyor Company, Inc., Kansas City, Kans.	6329	4449
C55—Memo dated April 4, 1958 from R. G. Dodd to L. M. DeSchane	6331	4451
C59—Memo dated March 14, 1957 from L. M. DeSchane to L. J. O'Brien re: Competition—Omaha and Lincoln, Nebraska	6332	4452
C60—Memo dated February 11, 1957 from H. E. Elster to D. H. Barnett re: Competition—Omaha, Notifier and Dictograph Corp.	6333	4453
C61—Memo dated January 9, 1957 from Ray Brechbill to E. Turnbull captioned Competition—Oshkosh, Wisconsin	6336	4456
C66—Memo dated May 27, 1955 from "E.O.B." to L. J. O'Brien captioned Banks, Direct Connect Privilege	6337	4457
C67—Memo dated May 23, 1955 from "District Operating Superintendent" to J. B. Rustic captioned B. A. System By Diebold, Inc., Canton, Ohio	6338	4458
—Newspaper clipping describing the ultrasonic device used by Diebold in local and direct connect vault alarm service	6339	4459
C76—Memo dated August 13, 1954 from R. L. Beckwith to D. R. Hall	6340	4460
C81—Memo dated November 11, 1953 from L. J. O'Brien to E. P. Hagan re Competition—Diebold, Police Headquarters, Milwaukee, Wisconsin	6341	4461
C87—Memo dated January 5, 1952 from M. E. Hubert to Mr. Dooley, Re: First National Bank, Omaha, Nebraska	6343	4463
C89—Memo dated January 13, 1958 from R. A. Bewes to R. T. Warner, Re: State of New York Executive Department, Division of Military and Naval Affairs, Albany, N.Y.	6344	4464
C91—Memo dated June 27, 1962 from W. K. Francis to Ray Brechbill, Re: Golden Gateway, Redevelopment Project, San Francisco, California	6346	4466
C97—Memo dated February 27, 1957 from D. R. Hall to L. J. O'Brien, Re: Proprietary Systems, GMC, Chevrolet Division, Ford Motor Company, Chrysler Motors Corporation	6347	4467

	Original	Print
Record from the United States District Court for the District of Rhode Island—Continued		
DEFENDANT ADT'S EXHIBITS—Continued		
D1—Memo dated August 19, 1952 from Commercial Superintendent to A. E. Smith re Aero Competition—Boston, Mass.	6349	4469
D11—Memo dated December 7, 1962 from W. A. Clark to W. C. Marin re The John Shillito Co., Cincinnati, Ohio	6350	4471
D15—Memo dated August 1, 1961 from F. J. Concannon to L. J. O'Brien captioned Julius Kessler Distilling Company, Calvert Distilling Company, Jeffersonville, Indiana (Louisville)	6352	4472
D18-1—Memo dated February 2, 1961 from R. L. Beckwith to J. K. Swanson re: Jacobsen's, Jackson, Michigan	6354	4474
D18-2—Memo dated December 26, 1960 from Ray Brechbill to L. J. O'Brien re: American Hard Rubber Company, Akron, Ohio	6356	4476
D20—Memo dated August 31, 1960 from L. J. O'Brien to District Sales Managers and Representatives, captioned Competition—Minneapolis-Honeywell	6357	4477
D21—Memo dated January 20, 1959 from M. H. A. Lindsay to J. A. MacDonald captioned Minneapolis-Honeywell Regulator Co., Minneapolis, Minnesota	6359	4479
D22—Memo dated August 16, 1960 from N. R. Brady to J. B. Bodley re Travelers Broadcast House, Hartford, Conn.	6361	4482
D24—Memo dated July 8, 1960 from J. B. Bodley to all ADT executive officers, re "Competition—Minneapolis-Honeywell Company"	6362	4484
D26—Memo dated April 29, 1960 from A. S. Jacks to H. B. Schultz re Tri-County Shopping Center—Shillito's, Federated Department Store	6364	4486
D27—Memo dated February 3, 1960 from M. H. A. Lindsay to J. A. MacDonald re Minneapolis Honeywell Regulator Company and Competition in general	6365	4487
D28—Competition Report—November 20, 1962—West Orange, New Jersey. Job lost to Kidde Atmo	6368	4491
D30—Memo dated August 9, 1961 from M. H. A. Lindsay to L. J. O'Brien re New CIA Headquarters, Washington, D. C. area	6369	4493
D32—Memo dated June 13, 1960 from A. Gaston to L. J. O'Brien re L. Bamberger & Company, Newark, New Jersey	6370	4494

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
DEFENDANT ADT'S EXHIBITS—Continued		
D33—Memo dated January 26, 1960 from F. D. Shadell to W. J. Doyle re Competition	6371	4495
D36—Memo dated January 31, 1956 from J. R. Hough to E. O. Betscher re Spurling and Kidde, Miami, Florida	6373	4497
D40—Memo dated January 14, 1954 from A. W. Sullivan to A. E. Smith captioned Atmo Competition	6375	4498
D41—Memo dated April 2, 1953 from "General Superintendent" to R. M. Pineo captioned Atmo Fire Alarm Company, Bridgeport, Conn.	6376	4499
D42—Memo dated May 27, 1953 from R. M. Bugbee to A. E. Smith captioned Atmo Competition—New Haven, Conn.	6377	4500
D45—Memo dated October 22, 1952 from W. J. Doyle to A. E. Smith re: Automatic Fire Alarm Competition, State of New Jersey	6378	4501
D46—Memo dated October 14, 1952 from F. H. Langille to W. J. Doyle re: Automatic Fire Alarm Competition, State of New Jersey	6380	4502
D51—Memo dated September 2, 1954 from E. J. Kaiser to King Young re: Competition	6381	4503
D59—Memo dated April 8, 1959 from J. T. Lynch to R. T. Warner re: The New Haven Board and Carton Co., New Haven, Conn.	6382	4504
D62—Memo dated March 12, 1957 from L. B. Straus to L. J. O'Brien re: Marshall Field & Co., Park Forest, Illinois	6384	4506
D75-B—Underwriters' Laboratories, Inc. Accredited Central Stations by date of approval since 1945	6385	4507
D75-E—Manual of Burglary Insurance (excerpts)	6387	4509

Exhibit Volume VIII

D89—Memo dated July 28, 1960 from Ray Brechbill to R. J. Highstone re: Highland Park Police Department, Highland Park, Illinois	6391	4523
D92—Memo dated January 5, 1960 from R. P. Lucy to W. K. Francis re: Bemis Bag Co., Newark, California	6392	4524
D93—Memo dated October 5, 1954 from L. J. O'Brien to A. E. Smith re: Direct Connected Competition—Diebold Company and Gamewell Co., Sioux City, Iowa	6393	4525

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
DEFENDANT ADT'S EXHIBITS—Continued		
D97—Memo dated June 30, 1955 from C. L. Chafee to A. E. Smith re: Competition—Cincinnati, Ohio	6395	4526
E1—Sprinkler Supervisory Coordinating Instructions No. 3, dated November 24, 1953 from C. S. Hammergren to All ADT Subsidiaries	6396	4528
E3—Letter from W. J. Dahl to A. W. Sullivan dated February 11, 1959, captioned Competition—Tacoma, Washington	6398	4530
E4—Letter from S. H. Filipkowski to W. B. Flammer, dated August 6, 1956, captioned ADT Competition, Birmingham, Alabama	6400	4532
E6—Memorandum from the Service Superintendent of ADT, Detroit, Michigan to Mr. Swanson, District Manager, dated October 10, 1960, captioned Competition—Detroit, Michigan	6401	4533
E7—Memorandum from W. K. Francis to L. J. O'Brien, entitled Competition, San Francisco, California	6402	4534
E8—Memorandum from R. T. Warner to L. J. O'Brien, dated April 6, 1960, captioned Competition	6405	4538
E9—Memorandum from E. J. Heisley to L. J. O'Brien captioned Competition—Washington, D. C., dated April 15, 1960	6407	4541
E10—Memorandum from A. S. Jacks to L. J. O'Brien dated April 25, 1960, captioned Competition—Cleveland District	6410	4543
E-13—Letter from C. L. Chafee to L. J. O'Brien, dated June 7, 1957, captioned Competition—Radar Eye Corporation	6412	4547
E14—Memorandum from C. L. Chafee to L. J. O'Brien, dated May 13, 1957 captioned Competition—Cleveland, Ohio	6413	4548
E15—Memorandum from E. J. Heisley to L. J. O'Brien, dated April 17, 1957, captioned Competition Radar-Eye	6414	4549
E16—Memorandum from R. T. Warner to L. J. O'Brien, dated March 8, 1957, captioned Competition—Radar-Eye	6415	4550
E18—Memorandum from E. J. Heisley to L. J. O'Brien, dated March 6, 1957, captioned Competition—Radar-Eye	6416	4551
E19—Photostatic copy of an advertisement for the Radar-Eye Protection System as published in the Buffalo Carrier Express Newspaper, February 11, 1958	6417	4553

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
DEFENDANT ADT'S EXHIBITS—Continued		
E22—Memorandum from A. L. Kauffman to W. W. Dooley, dated August 12, 1954, captioned Competition—Denver, Colo.	6418	4555
E28—Memorandum from W. E. Mauroschadt to E. J. Heisley, dated December 18, 1956, captioned Competition, First Camden National Bank, Camden, New Jersey	6419	4556
E-32—Memorandum from D. R. Hall to L. J. O'Brien, dated March 21, 1956, captioned Competition—Diebold Bank Alarms	6420	4557
E-36—Memorandum from C. K. Empringham to Mr. John Stephens, dated August 30, 1955	6421	4558
E48—Memorandum from Lynne Stora to E. B. White, dated August 9, 1954, captioned Continental Can Company, Sacramento, California	6422	4559
E52—Letter from the President of ADT to the President of Holmes Electric Protective Company, dated March 27, 1947	6424	4561
E53—Letter from H. C. Ward, President, Holmes Electric Protective Company to E. A. Ward, President, ADT, dated March 26, 1947	6425	4561
E55—Memorandum from E. Turnbull to L. J. O'Brien, dated November 27, 1956, captioned "Certificate—Holdup Alarm, Minneapolis District"	6426	4562
E56—Memorandum from M. H. A. Lindsay to J. A. MacDonald, dated January 20, 1959, captioned Southdale Shopping Center, Minneapolis, Minnesota	6427	4563
E57—Memorandum from L. H. Pryor to E. Turnbull, dated June 20, 1956, captioned Electro-Watchman, Inc.	6430	4566
E58—Memorandum from L. H. Pryor to E. Turnbull, dated May 29, 1956, captioned Electro-Watchman, Inc., St. Paul, Minnesota	6432	4569
E60—Memorandum from D. R. Hall to L. J. O'Brien, dated September 2, 1958, captioned McConnell Kerr Company, Detroit, Michigan	6434	4571
E61—Contract competition report form 701 involving a prospect in Grand Rapids, Michigan	6435	4573
E69—Memorandum from R. T. Warner to L. J. O'Brien, dated April 12, 1957, captioned Competition—The Federal Burglar Alarm Company, Boston, Massachusetts	6436	4575
E70—Memorandum from R. T. Warner to L. J. O'Brien, dated January 8, 1958	6437	4575

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
DEFENDANT ADT'S EXHIBITS—Continued		
E71—Memorandum from R. T. Warner to L. J. O'Brien, dated September 12, 1956, captioned Kennedy's Inc.	6438	4577
E72—Memorandum from N. R. Brady to R. T. Warner, dated July 25, 1956	6439	4578
E82—Memorandum from E. J. Pucci to W. Hable, dated January 18, 1963, captioned Legislation—Laws and Ordinances Passed by City Councils and State Legislatures in the Minneapolis District—Davenport—Moline	6440	4579
—Attachments—Newspaper clippings	6441	4579
E84—Memorandum from E. Turnbull to L. J. O'Brien, dated July 27, 1960, captioned Competition—Cedar Rapids, Iowa	6445	4581
E86—Memorandum from D. R. Hall to L. J. O'Brien, dated September 2, 1958, captioned The Columbia-Western Corporation, South Bend, Ind.	6447	4583
E89-1—Letter from C. A. Wiborg, Lumbermen's Mutual Casualty Company to the Holmes Electric Protective Company, dated January 30, 1956, captioned Stewart Warner, Inc.	6448	4584
E-89-2—Letter from E. J. Heisley to A. E. Smith, dated December 7, 1954, captioned Police Department Competition, Atlanta, Georgia	6449	4585
F16—Memorandum from the Secretary of ADT to J. A. MacDonald, dated June 24, 1963, captioned The Citizens & Southern National Bank, Atlanta, Georgia	6451	4589
F20—Memorandum from W. J. Dahl to Ray Brechbill, dated March 5, 1964, captioned Public Relations, Fire Department, Salt Lake City, Utah	6458	4597
F42—Memorandum from J. J. Hayden to J. K. Scott, dated September 23, 1963, captioned Southern Burglar Alarm Co., Atlanta, Georgia	6463	4603
F43—Memorandum from P. K. Labadie to W. C. Martin, dated April 23, 1964, captioned Competition	6464	4604

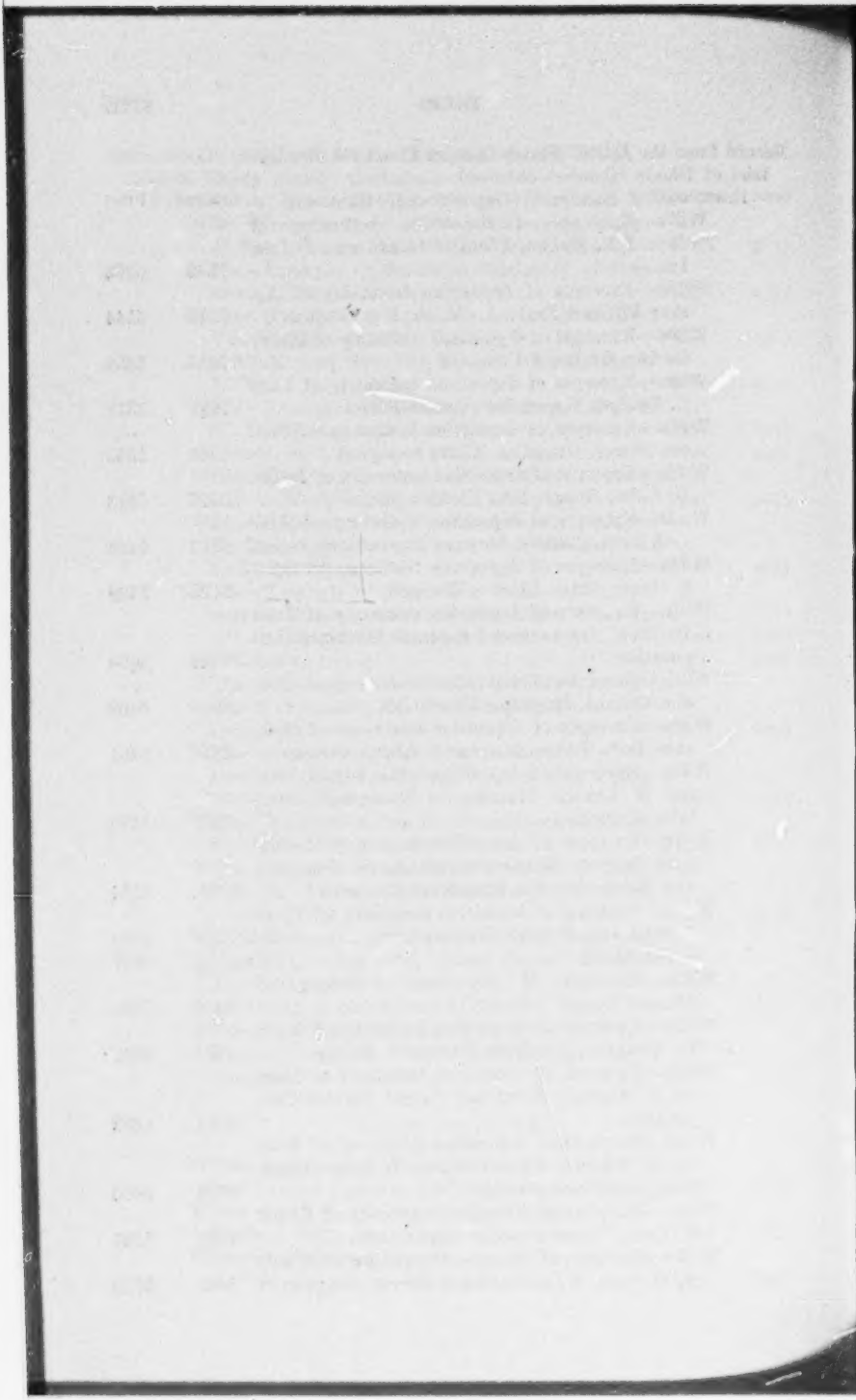
Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
DEFENDANT HOLMES ELECTRIC PROTECTIVE COMPANY'S EXHIBITS		
H4—Pamphlet of the Autocall-Howe Plant Protection Systems	6466	4605
H5—Letter from C. K. Empringham to Howard Stores, Inc., Brooklyn, N.Y., dated August 31, 1959	6475	4615
H11—Report by J. G. Healey, Superintendent of Shops and Supplies, on the Local Alarm Conference, held November 4, 1960 in the President's Office, dated November 4, 1960 (excerpts)	6478	4617
H16—Leaflet called "Protective Bulletin" issued by the Insurance and Protective Department, American Bankers Association, for March, 1960	6483	4619
H18-1—Letter from H. C. Ward to P. R. Webb dated April 16, 1952	6485	4622
H18-2—Memorandum from V. Wierman, Diebold, Inc., August 6, 1955	6488	4627
H-23—Competition report of Holmes, dated June 9, 1961, Pittsburgh, Pa. for the protection account of the Keystone Iron & Metal Company	6490	4629
H-26—Holmes Business Form No. 640 states that Holmes was bidding against a local alarm company for the protection account of Citra Trading Corp.	6491	4630
H-30-1—Competition Report of the Holmes Electric Protective Company, dated January 3, 1963 in Philadelphia for the protection account of the Strait Advertising Company, Incorporated	6492	4631
H30-2—Letter from T. L. Weber to Bruce D. Crockett, dated August 7, 1962, captioned Competitive Activity	6493	4633
DEFENDANTS' EXHIBITS (Depositions)		
W2a—Excerpts of deposition testimony of Joseph E. Cunningham, A. P. F. Company	6494	4634
W4a—Excerpts of deposition testimony of M. I. Brod, Accurate Burglar Alarm Service	6523	4646
W5a—Excerpts of deposition testimony of Gerson Zimmerman, Ace of Spades Burglar Alarm Company	6537	4649
—Exhibits and handwritten corrections	6648	4700
W6a—Excerpts of deposition testimony of Thomas J. Smith, Alarm Engineering Company, Inc.	6660a	4708
—Exhibits A thru E	6660xxx	4754
W7a—Excerpts of deposition testimony of John W. Callaghan, Alarm Systems, Inc.	6660ccc	4765
W8a—Excerpts of deposition testimony of Joseph Siegel, Alert Alarm Company	6662	4788

Record from the United States District Court for the District of Rhode Island—Continued		
DEFENDANTS' EXHIBITS (Depositions)—Continued	Original	Print
W9a—Excerpts of deposition testimony of George J. Kusta, Arrow Electric Protection Company	6713	4807
W10a—Excerpts of deposition testimony of Eric David, Tattle-Tale Alarms	6813	4843
W11a—Excerpts of deposition testimony of Roy Van Wagner, Autocall Company	6861	4861
—Affidavit of Roy Van Wagner, dated August 7, 1963	6905	4880
W12a—Excerpts of deposition testimony of Frank W. Houghton, Automatic Alarms	6907	4881
—Exhibits 7, 8, 13 and 14	7006	4921
W13a—Excerpts of deposition testimony of Everett A. Westphal, Bay Alarm Company	7012	4925
W14a—Excerpts of deposition testimony of Morton Baizer, Bell Burglar Alarms and Eagle Protective Company	7073	4951
W16a—Excerpts of deposition testimony of Joseph G. Wilson, Central Burglar Alarm Service and Surety Alarm Company	7166	4987
—Exhibits 1 & 2	7255	5026
W17a—Excerpts of deposition testimony of Arthur A. Schwartz, Certified Burglar Alarm Systems, Inc.	7261	5039
W18a—Excerpts of deposition testimony of Clarence W. Novak, Chicago Mercantile Police Alarm Systems	7437	5115
W19a—Excerpts of deposition testimony of James H. Coffey, Circle Alarm Corporation	7455a	5122
W21a—Excerpts of deposition testimony of Kenneth M. Holmes, Dallas Burglar Alarm Company	7458	5152
W22a—Excerpts of deposition testimony of Claude L. Carpenter, Dawn Patrol Burglar Alarm Company	7490	5166
—Exhibits 2 and 4	7565	5192
W23a—Excerpts of deposition testimony of Grant Richard Hamilton, Day & Night Burglar Alarm Company	7570	5196
Exhibit Volume IX		
W24a—Excerpts of deposition testimony of Alfred Wayne Jackson, Diebold, Incorporated	7626	5215
W25a—Excerpts of deposition testimony of R. Stafford Edwards, Edwards Company	7742	5255
W26a—Excerpts of deposition testimony of Lyle A. Vadnais, Electro Watchman, Inc.	7784	5281

Record from the United States District Court for the District of Rhode Island—Continued

	Original	Print
DEFENDANTS' EXHIBITS (Depositions)—Continued		
W27a—Excerpts of deposition testimony of Gerald R. DeLue, Frontier Guard and DeLue, Inc.	7845	5308
W28a—Excerpts of deposition testimony of Arthur William Fruh, A. W. Fruh & Company	7916	5344
W29a—Excerpts of deposition testimony of Harry Gerber, Gerber & Company	7935	5354
W30a—Excerpts of deposition testimony of Loys C. Bridges, Greenville Avenue Patrol	7998	5378
W31a—Excerpts of deposition testimony of Milton Pierce, Guardian Alarm Company	8035	5395
W32a—Excerpts of deposition testimony of Julian C. Cohn, Robert Hall Clothes, Inc.	8097	5418
W33a—Excerpts of deposition testimony of Kenneth V. McCluskey, Howard Stores Corporation	8113	5423
W34a—Excerpts of deposition testimony of John S. Nacey, Howe Electric Company	8128	5429
W36a—Excerpts of deposition testimony of John H. Trout, International Business Machines Corporation	8219	5459
W37a—Excerpts of deposition testimony of Gordon Dillard, Magnetic Alarm Inc.	8244	5469
W38a—Excerpts of deposition testimony of Clarence Irvin Baker, Merchants Alarm Service	8314	5491
W39a—Excerpts of deposition testimony of Russell W. Laxson, Minneapolis Honeywell Regulator Company	8399	5530
W40a—Excerpts of deposition testimony of William Baggett, Mossie Burglar Alarm Company and Mossie Electric Protection Company	8438a	5554
W41a—Excerpts of deposition testimony of Oliver Tyrrell Joy, Notifier Corporation	8438ppp	5584
—Exhibit A	8438jjjjjj	5627
W42a—Excerpts of deposition testimony of Michael Singel, Security Alarm	8440	5631
W43a—Excerpts of deposition testimony of Mary B. Nordsiek, Nordsiek Protection Service	8474	5647
W44a—Excerpts of deposition testimony of Morris J. Amsrud, Suburban Patrol Service Corporation	8491	5652
W45a—Excerpts of deposition testimony of Robert E. Leeper, United States Burglar Alarm Company, Incorporated	8501	5656
W46a—Excerpts of deposition testimony of Victor R. Zahn, Victor Burglar Alarm Company	8569	5684
W47a—Excerpts of deposition testimony of Henry A. Walters, WECO and Ace Alarm Company	8648	5722



[fol. 462] IN THE UNITED STATES DISTRICT COURT OF THE DISTRICT OF MASSACHUSETTS

[Title omitted]

Civil Action No. 2785

Transcript of Trial—Boston, Mass., June 15, 1964.

APPEARANCES:

Noel E. Story, Esq. and Hugh F. Morrison, Jr., Esq., Anti-trust Division, counsel for the plaintiff.

Denis G. McInerney, Esq., Roger T. Clapp, Esq. and Gerald C. Van Cise, Esq., counsel for the defendant Grnnell Corporation.

Frank A. Fritz, Esq., Frank A. Fritz, Jr., Esq., Matthew W. Goring, Esq., Robert L. Conkling, Esq. and Averill M. Williams, Esq., counsel for the defendants American District Telegraph Company, Holmes Electric Protective Company and Automatic Fire Alarm Company of Delaware.

[fol. 463] COLLOQUY AND OFFER IN EVIDENCE OF GOVERNMENT EXHIBITS

1 THROUGH 307 AND OBJECTIONS THERETO

Mr. Story: Shall I proceed, your Honor?

The Court. Yes.

Mr. Story: Your Honor, the Government waives an opening statement in this matter, but I would request your Honor to allow me a very short rebuttal in the event that the defendants make an opening statement.

The Court: All right. No opening will be made until the defendants begin, in accordance with the usual practice in this court.

Mr. Story: Very well, your Honor. Well, your Honor, at this time the Government would like to proceed with the introduction of its documentary evidence.

The Court: You may proceed.

Mr. Story: Your Honor, I have one suggestion, if it is agreeable to all parties here, that will save some time, your

Honor. As your Honor knows, by order of this Court the Government filed with the Court designation of the documents that it intended to use in its case-in-chief back in February, I think it was February 1st.

In that document, the Government listed documentary material numbered from 1 to 307. Now it is my intention here this morning, your Honor, to describe only——

The Court: You need not describe them. They have already been described.

[fol. 464] Mr. Story: That is what I was going to suggest, your Honor.

The Court: You may offer them in bulk.

Mr. Story: Very well, your Honor. There is just one point that I would like to bring out to your Honor. There are some six documents where the Government introduced only a portion of the document. Now we have received objections from the defendants to the admissibility of these documents. They have not objected so far to the introduction by the Government of only a portion. But I want to point out that to your Honor, so that in the event, as to those six documents, the defendants would like to offer any other portions, this will give them that opportunity.

With that, your Honor, and to be of assistance to all of us in handling the exhibits in the record, I would suggest that the Government's memorandum be given to the Court Reporter and have him type in the record of this hearing, just as I have here, the documents which have been, incidentally, your Honor, marked for identification by your Clerk, in the same numerical order as they appear in my memorandum.

The Court: There is no reason for the Court Reporter to undertake that labor. I will receive that — has it been marked?

Mr. Story: This has not been marked.

[fol. 465] The Court: I will receive that merely as a matter for identification. It is not an exhibit. It is a classification of exhibits. It is not received as an exhibit. It is, however, to be given a number, as though it were an exhibit, but to be marked an exhibit for identification only. What is the next number?

The Clerk: 364.

The Court: It is 364 for identification only.

(Document entitled Designation of Documents upon which Plaintiff Will Rely in its Case-in-Chief and a statement of the main issues to which each document primarily relates, marked Exhibit 364 for Identification.)

The Court: Now you offer the 363 preceding exhibits?

Mr. Story: The Government now offers what have been marked Government Exhibits 1 through 307 for identification into evidence.

The Court: Is there any objection?

Mr. Fritz: I have two matters, your Honor.

Mr. Story: Wait a minute.

The Court: Wait a minute. I thought Mr. Story had concluded.

Mr. Fritz: I am sorry.

[fol. 466] Mr. Story: I am sorry, your Honor. I have finished.

The Court: Mr. Fritz?

Mr. Fritz: First of all, if your Honor please, I object to the receipt of these documents in bulk.

The Court: They will not be considered of course in bulk. But all have been before you, all of them have been analyzed, and it is a matter of convenience to have them presented in bulk. I will of course regard them individually.

Mr. Fritz: Yes, I understand that. I wish to make the point, however, and I want to do it at the outset, that with such a bulk presentation, we have here a claim by the Government for conspiracy between or among the four defendants, and I represent three of those defendants, and I suppose it is fundamental that no document relating to any alleged act or episode that may be referred to in any document on the part of one can possibly bind any other person until the so-called conspiracy is proved as an independent fact.

The Court: I am satisfied from my examination of the documents that a prima facie case has been made for the admissibility on the conspiracy theory.

Mr. Fritz: Well, I respectfully urge my reasons, as a preliminary objection. Secondly, as counsel for the Government has said, and as your Honor has noted, we have been furnished with a list of these documents, and we also have [fol. 467] furnished the Government with the designation of the objections that we have to those documents. There

are some of course to which we made no objection. Frankly, I am in a bit of a quandary as to what the situation is with regard and will be with regard to those objections.

The Court: I am going to rule upon them this morning or as soon thereafter as you have finished your argument.

Mr. Fritz: Well, I don't think the document I have here will fully acquaint your Honor with the detail bases for the objections.

The Court: You have my permission to speak orally as long as you like, to the Greek Calends, if you please.

Mr. Fritz: Well, I haven't any intention, if your Honor please, of arguing the objections to each of these three hundred and some odd documents individually, but I have noted to the Government the nature of our objections to those to which we do object. I have a statement here setting forth the nature of those objections in very cryptic form, however. I would be glad to hand those to the Court as part of the record in this case——

The Court: You may do so.

Mr. Fritz: —as a basis for your Honor's consideration.

[fol. 468] The Court: You may do so. I have told you I am ruling as soon as you have finished. Anything you wish to say by way of elaboration you are free to say. No cloture will be imposed.

Mr. Fritz: Well, I don't think I wish to say anything further than to simply call your Honor's attention to the nature of the objections we have to the various documents listed on this exhibit.

The Court: It is received as Exhibit A for Identification on the part of the defendants, not for admission but for identification.

(Schedule of defendant Alarm Companies' Proposed Objections marked Defendants' Exhibit A for Identification.)

Mr. Story: May I proceed, your Honor?

The Court: I don't know whether somebody else wants to say something.

Mr. McInerney: If your Honor please, rather than duplicate the statements of co-counsel, I would adopt his objections insofar as they pertain to this defendant, and I would like to further note, your Honor, one other difference

in our position, perhaps not a difference but perhaps not one brought out and emphasized by co-counsel.

Grinnell not only objects to these documents, or certain of them, but I have a list here——

[fol. 469] The Court. You may hand that up, if you wish, and it may be marked Exhibit B for Identification.

(Defendant Grinnell Objections (to Government documents) marked Defendants Exhibit B for Identification.)

Mr. McInerney. In addition to the grounds stated on that list, your Honor, your Honor has stated that a prima facie case has been made out for a conspiracy and, therefore, the documents of the alleged co-conspirators should be admissible as against all of the defendants. This defendant has had a controlling interest in the other three defendants since 1953 and we respectfully submit, your Honor, that insofar as the documents between these defendants, excluding those, but just taking the intra-corporate affairs of each defendant, even though those documents may relate to relations with the other defendants but did not pass between the defendants, that is to stay any document that is not from, to or about Grinnell, since the period of its common ownership of these subsidiaries, we submit that as of that time there is no conspiracy recognizable in law with respect to the intra-corporate affairs of these people. Your Honor, I am not going to argue at great length.

Mr. Story: Your Honor——

[fol. 470] The Court: I know the Supreme Court cases. Do sit down, Mr. Story.

Mr. Story: Your Honor, I had not finished my evidentiary presentation as to——

The Court: Please sit down, Mr. Story.

Mr. McInerney: This is a very substantive point with us, your Honor.

The Court: I understand that. And it is one which, of course, you are free to try to get the Supreme Court of the United States to change its views upon.

Mr. McInerney: All I am saying, your Honor, is that I do not intend to expound on it at great length at this time. I simply wanted to note that objection, for the record, and have your Honor's ruling on it at the close of the plaintiff's case.

The Court: The 307 exhibits, Exhibits 1 through 307 for

Identification, inclusive, are admitted in toto, in accordance with the proffer. All objections are overruled.

(Documents formerly marked Government's Exhibits 1 through 307 for Identification received in evidence.)

OFFER IN EVIDENCE OF ADDITIONAL GOVERNMENT EXHIBITS

Mr. Story: Now, your Honor, the next five exhibits which have been marked for identification are duly executed stipulations between the parties. I would like now to identify them on the record.

Government Exhibit for Identification No. 308 is stipula-
[fol. 471] tion No. 1 between the parties, which is a stipulation as to the authenticity of the documents offered into evidence by the plaintiff, that is, Government Exhibits 1 through 307.

The Court: Is there any objection? I hear none. Admitted.

(Stipulation No. 1 between the parties marked Government's Exhibit 308 and received in evidence.)

Mr. Story: The next document, which has been marked Government Exhibit 309 for Identification, is designated as Stipulation No. 2, which is a stipulation as to the volume of customers across State lines in the United States and the District of Columbia.

The Court: Mr. Story, if these are all stipulations, there is no need for you to describe them. You will just run up a bill with the Court Reporter. How many stipulations are there?

Mr. Story: There are five.

The Court: Is there any objection to any of them?

Mr. Fritz: No, sir, we have stipulated.

The Court: They are all admitted.

Mr. Fritz: I am assuming that we are talking about the same ones he is.

[fol. 472] The Court: Obviously if there is a mistake with respect to that, I will reopen the matter.

Mr. Story: Just for the record, your Honor, the stipulations have been numbered Government Exhibits 308, 309—

The Court: You are not buying this transcript but the defendants are. Why charge them for your words?

Mr. Story: Well, your Honor, this will only take a few minutes, and I would like the record to be straight.

The Court: All right.

Mr. Story: Government's Exhibits 311 and 312.

(Stipulations Nos. 2, 3 and 4 and 5 between the parties marked Government's Exhibits 309, 310, 311 and 312, respectively, and received in evidence.)

Mr. Story: Now, your Honor, the next four exhibits which have been marked for identification are the Government's extracts of answers by the defendants to interrogatories propounded by the Government.

The Court: 313 through what?

Mr. Story: 313, 314, 315 and 316.

The Court: Is there any objection? I hear none. Ad-
[fol. 473] mitted.

(Designation of Answers of ADT, Holmes Electric Protective Co., Automatic Fire Alarm Co. of Delaware and Grinnell Corporation to Interrogatories propounded by Plaintiff, marked Government's Exhibits 313, 314, 315 and 316, respectively, and received in evidence.)

Mr. Story: Now, your Honor, the next exhibits which have been marked by your Clerk for Identification are excerpts from the transcripts of depositions taken in this matter.

The Court: What are their numbers please? Beginning with 317?

Mr. Story: 317 through 363.

The Court: These are all extracts from depositions?

Mr. Story: Yes, your Honor.

The Court: And you are offering them in toto. And there is no objection to them, I assume?

Mr. Story: No, your Honor, there is not.

The Court: No objection?

Mr. Fritz: Well——

Mr. Story: I——

The Court: Just a moment. There appears to be an objection by Mr. Fritz.

[fol. 474] Mr. Story: Well, your Honor, I am not offering all of them into evidence.

The Court: What are you doing?

Mr. Story: Some of the extracts, your Honor, I am not offering into evidence.

The Court: Which ones did you have marked you do not intend to offer?

Mr. Story: I can state those in the record right quickly.

The Court: I hope so.

Mr. Story: Government Exhibit 321, which is a deposition of Benjamin H. Call of the Call Police Signal Corporation, Chelsea, Massachusetts. The Government does not plan to offer into evidence this deposition because we found in the late stages that it would be cumulative.

The Court: I am not ruling on matters not offered. Just give me the numbers of the ones you are not offering.

Mr. Story: I am not offering Government Exhibit for Identification 321, 322——

Mr. Fritz: Excuse me. What was that number?

The Court: 321 and 322.

Mr. Story: Yes, sir.

Mr. Fritz: Could you give us the name please?

The Court: Yes, do that. The first one was Call.

[fol. 475] Mr. Story: All right.

The Court: The second one?

Mr. Story: Exhibit 322 for Identification is a deposition of Henry G. Clark, Providence, Rhode Island.

Mr. Fritz: Who is 321?

The Court: Call.

Mr. Fritz: Thank you.

Mr. Story: Government Exhibit 327 is the deposition of Joe Forman of the Call Police Signal Corporation, Chelsea, Massachusetts.

Government Exhibition for Identification 332 is the deposition of Francois Guibert, District Telegraph Company, Newark, New Jersey.

Government Exhibit for Identification 344 is the deposition of Ralph C. Peabody, Granite State Alarm Company, Manchester, New Hampshire.

Government Exhibit for Identification 350 are excerpts from the deposition of Herman E. Robinson, Protective Alarm Company, Philadelphia, Pennsylvania.

Government Exhibit for Identification 353 is the deposition of Freddie Schnell, Electro-Protective Corporation, Newark, New Jersey.

Government Exhibit for Identification 354, extracts of the deposition of Jack Silverman, National Protective Corporation, Baltimore, Maryland.

[fol. 476] The Government is not offering the exhibits I have just related.

The Court: The Government's offer is of Exhibits 317 through 320, 323 through 326, 328 through 331, 333 through 343, 345 through 349, 351, 352, 355 through 363. Is there any objection?

Mr. Fritz: Well, there are two others I would like to make inquiry about because I think they fall in the same category of reasons for which the others have been excluded. I may be in error.

The deposition of Mr. Rosenberg of the Hyde Park Alarm, which is within 100 miles of this court, may I ask the Government whether that deposition is to be offered or not?

Mr. Story: The Government—Mr. Who, sir?

Mr. Fritz: Mr. Rosenberg, Hyde Park Alarm, in this area.

Mr. Story: The Government has not designated any portion of that deposition and at the moment we do not intend to offer any of it.

Mr. Fritz: Very well. May I also inquire whether or not the deposition of Harold S. Leich, Milwaukee, Wisconsin, is intended to be offered by the Government?

Mr. Story: It was offered, your Honor, and I intended to offer it.

[fol. 477] The Court: The number please?

Mr. Story: Your Honor, that is Exhibit 355—335, rather.

The Court: 355.

Mr. Story: Well, your Honor——

The Court: Hold on for a moment. I don't want anything on the record or off the record until I have read this communication which has just been handed to me.

I have just been handed a communication, received this morning in the office of the Clerk, from Harold S. Leich, who, I assume, is the person to whom reference has just been made in the preceding colloquy. This is addressed to Neale D. Murphy, Clerk. It is addressed to the United States District Court, United States Court House and Post Office Building, Boston, Mass.

It reads as follows:

"Dear Mr. Murphy" and it is signed "Harold S. Leich."

"Would you please hand the Judge the enclosed letter. The enclosed subpoena was not served on me until 7:30 A.M. June 13, 1964.

"I also contacted at 12:42 A.M. June 14, 1964 Mr. Ralph Schulke of the local A.D.T. office so that he could inform their attorneys."

[fol. 478] And the enclosed letter is from a Dr. Francis F. Rosenbaum, 425 East Wisconsin Avenue, Milwaukee, Wisconsin. It is dated June 13, 1963. It is addressed to this Court and says:

"This is to certify that I have attended Mr. Harold S. Leich of 8860 No. Tenneyson Dr., Milwaukee, Wis., 53217, since November 1960. Mr. Leich has extensive coronary artery disease.

"I have been informed that Mr. Leich has been asked to appear at a trial in Boston on the morning of June 15, 1964. It is my opinion that Mr. Leich should not appear at a trial without adequate medical preparation and that the time allotted since his notification is not sufficient to permit this."

Mr. Duffey, in copying this in the record, there are a number of typographical errors. It is to be copied exactly as it is, please.

In view of this plausible, at any rate, excuse, do you want to persist with the offer of exhibit 355 for Identification?

Mr. Story: Yes, your Honor.

The Court: All right. I just did not know whether in view of the fact it is quite obvious we may have to have a postponement, if you introduce 355 for indentification, [fol. 479] you want, yourself, to invite that postponement.

Mr. Story: In just a moment——

The Court: That is all I am asking you. Nothing more. Think about it.

Mr. Story: Your Honor, the Government will withdraw its offer.

The Court: All right. That is enough. You don't have to tell me why.

Mr. Story: I want to straighten the number out, your

Honor. I called it 355. It should be 335. I would like to get that straightened out on the record.

The Court: All right.

Mr. Story: The Government will withdraw its offer of this deposition into evidence.

The Court: All right. It is withdrawn. That makes it 333, 334 and 336 through 343.

Mr. Fritz: Mr. Story, have you finished with your offer?

Mr. Story: Yes.

COLLOQUY BETWEEN COURT AND COUNSEL FOR DEFENDANTS

Mr. Fritz: If your Honor please, some time back——

The Court: Excuse me. Before you do proceed, would Mr. Story or somebody on the United States Government's side inform Mr. Leich that the subpoena—no, I guess the defendants issued the subpoena.

[fol. 480] Mr. Fritz: That is correct, yes, sir.

The Court: Will the defendants inform him that the subpoena is withdrawn?

Mr. Fritz: Yes.

The Court: With the consent of the Court it is quashed. Now you may proceed.

Mr. Fritz: As your Honor will note, and probably has not had an opportunity to note, counsel for the Government and ourselves have cooperated to have printed almost as a running text the excerpts from all of these depositions that have been offered.

The Court: You would be surprised at how much I have noted, although in your arguments you have sometimes assumed that I do not note what is filed.

Mr. Fritz: I really would not assume that, sir. It is just bulk that I thought——

The Court: You had better make no assumptions as to the rate or quantity of work that I have done.

Mr. Fritz: I hope your Honor will take my statement that I meant not the slightest offense or reflection.

The Court: I do regard your statements as both an offense and a reflection at an earlier stage because they are based upon the assumption that I gained information from some other source or other circumstances than by [fol. 481] your demand that I should read these documents.

Mr. Fritz: May I——

The Court: You yourselves put on me the burden of forming an opinion and I did form one.

Mr. Fritz: May I respectfully say that I had no such intention in any comment I made to this Court.

The Court: You have sometimes given the Court the impression that I acquired some idea of this case except from you and opposing counsel. I have no other idea.

Mr. Fritz: I have purposely never intended to convey the slightest intimation of that to your Honor nor has it been in my mind at any time, and if I did so it was certainly an inadvertence, which I regret very much.

The Court: You have made it quite plain to the country at large, or at least to this community, that you regarded me as having formed an opinion from some other way than a Judge ought to form an opinion.

Mr. Fritz: Well, I don't think it becomes me to make any comment except to say that what I submitted to this Court I did on the basis of only two matters, two excerpts of hearings before this Court, one, May the 28th and one, June the 3rd, and they were presented in full.

The Court: They did not tell the whole story because over my strong reluctance you insisted that I should hold [fol. 482] a case in suspense so that you could confer about a possible settlement and that I could look at the papers with respect to the matter. You, not I, created the difficulty. Any Judge would properly resent being drawn into a situation as a trap and then have the door let loose.

Mr. Fritz: Well, I don't think it would serve any useful purpose on my part certainly—your Honor seems to have strong convictions about that—but let me just close it by saying that for my part, and I am sure for Mr. McInerney's part, we came her suggesting the use of the Handbook Procedure in the utmost of good faith thinking it would be of help. Now we may have been mistaken in that but that was what our motivation was.

The Court: You proceeded to disqualify two Judges and sought to disqualify the third on the eve of a trial that had been postponed for nine months.

Mr. Fritz: The disqualification of the two prior Judges was purely voluntary on their part and had nothing to do with any of us.

Now with respect to the depositions that have been offered by the Government may I point out, as I was say-

ing to your Honor, and I perhaps used an unfortunate phrase, that we collaborated to put together the excerpts from the depositions so that they would present a running [fol. 483] story with respect to each of the depositions.

However, both we and the Government have noted objections to certain portions of the depositions that each has selected. The pages of those objections are not reflected in the deposition excerpts as filed, and so we have pending at the moment objections to certain portions of these depositions which I wish to submit to your Honor for consideration in such fashion and at such time as your Honor might want them.

The Court: Right now.

Mr. Fritz: Well, sir, the exhibit, as I have it prepared, sir, includes the depositions that were withdrawn this morning. I had no way of knowing that they were not going to be pressed. So may I have just a few minutes to rearrange this document?

The Court: Surely. Do you want a recess for a few minutes?

Mr. Fritz: I think so, sir.

The Court: All right. We will take a 10 minutes' recess.

(Recess.)

The Court: Mr. Fritz, you may proceed.

Mr. Fritz: I am not ready, but may I make this suggestion, so we do not waste time. We have not been able mechanically to do what I had hoped we could do in this [fol. 484] short period of time. May I offer——

The Court: You may have as long a recess as you want.

Mr. Fritz: Well, if that is so, then I would appreciate putting this in an orderly fashion. It may take another ten minutes or so.

The Court: You may have certainly ten minutes.

Mr. Fritz: Thank you, sir.

The Court: When you are ready, let the Court Officer know.

Mr. Fritz: I beg your pardon, your Honor?

The Court: When you are ready, let the Court Office know.

Mr. Fritz: Thank you very much.

(Recess.)

[fol. 485] Mr. Fritz: If the Court please, I offer to the Clerk to be marked by the Reporter five sections of documents containing the defendants' objections to the depositions which have been offered by the Government this morning, and these sections are all tied in by reference to the Government Exhibit numbers on those depositions.

I apologize for the appearance, but it results from the removal of the sheets relating to those depositions which the Government has withdrawn.

The Court: Do you want to be heard orally in addition to your written presentation?

Mr. Fritz: Well, frankly, I think it would be a very time-consuming problem.

The Court: All right, then don't. If you will just hand them to me I will have marked as Exhibit C for Identification those documents, of which there are five. They will be C-1 through C-5 for Identification.

Will you mark them and hand them to me, please?

Mr. McInerney: If your Honor please, on behalf of the Grinnell Corporation, rather than duplicating the objections of co-counsel, with your Honor's permission I would like to adopt them, and if we may follow that procedure throughout this trial I think it will save time.

[fol. 486] The Court: Yes. It will be understood that unless someone states otherwise, every objection throughout this trial made by any counsel for any defendants applies to all the defendants, not only to the particular defendant on whose behalf counsel is objecting. That is a universal ruling to be applied throughout this case.

Mr. McInerney: Thank you, your Honor.

If I may call your Honor's attention to just one of these exhibits, which is Exhibit 351, Government's Deposition of James E. Rose taken in Detroit September 26, 1962, we don't intend to argue the objections orally to your Honor, but I would like to call the Court's attention to the type of testimony that is being submitted.

Mr. Rose testified to an instance of alleged misconduct on the part of a Grinnell employee, and I won't go into that. I will just give in very brief form from one sentence the nature of the witness' knowledge with respect to that incident.

This is Mr. Rose testifying, page 95, second line:

"My superintendent, Mr. Gilbert, passed the remark to me that our installer on the job, Ted Huffer, had passed a remark to him that during the installation of us installing our devices, our switch on the O.S. & Y. [fol. 487] valves, that the Grinnell representative told our man——"

And then there was an objection, and properly so, I might say, your Honor. This is quadruple hearsay.

That paragraph gives the sum and substance of the nature of this witness' knowledge with respect to anything concerning the Grinnell Corporation, and our objection to that testimony on the ground of hearsay runs to all of the testimony with respect to the Grinnell Corporation on page 93, line 24, through page 98, line 18, Exhibit 351.

Now I won't argue the other objection, but I just wanted to call the Court's attention to that one. Thank you, your Honor.

Mr. Fritz: May I just add I don't wish to make oral argument, but what Mr. McInerney has just read to your Honor is perhaps extreme but there is a great deal of that in all of these deposition, and our objections are based on that as well as on other bases.

RULING OF THE COURT

The Court: I should like to make it quite clear that I have no intention whatsoever of resting my findings, conclusions, or judgment upon the type of hearsay illustrated just now by Mr. McInerney.

As I have already abundantly made clear in an earlier case, United States v. the United Shoe Machinery Corporation, I do not regard the hearsay rule in its full vigor [fol. 488] as entirely applicable to antitrust matters, and in that respect subsequent decisions in the Supreme Court of the United States indicate I made no error in that attitude.

I would not for a moment in any manner take into account four-stage hearsay or anything like that. These questions of hearsay are always difficult problems. The hearsay rule is not, as some people erroneously suppose, a rule adopted only for jury cases. It does apply to cases in which a Judge sits alone.

However, the original purpose of the hearsay rule was to preserve the advantages of effective cross-examination. See Edmund M. Morgan passim.

In antitrust cases central adjudication ought not to be made on the basis of hearsay. However, certain background matters and certain minor questions may to some extent rely upon minor hearsay elements.

With respect to questions of relevance and materiality, needless to say, an objection is always valid. To determine whether a particular matter is or is not relevant or material requires a total view of all the evidence. It is generally undesirable save in the plainest case immediately to rule when a Judge sits alone upon questions of relevancy and materiality.

When he comes to draft his findings, conclusions, and [fol. 489] judgment, he is in a much better position to take a total view of the total picture and to see whether something which initially appears to be irrelevant or immaterial is in fact irrelevant or immaterial.

To be sure, the making of such determination has some disadvantages for the defendants in that they cannot know whether something will or will not be excluded.

That kind of risk, however, is relatively minor because they, like the Judge, will have a better understanding of whether something is irrelevant or immaterial when they too look at the total case.

In any event, so far as I am concerned, I am not now going to exclude anything on the ground that it is irrelevant or immaterial, nor am I going to exclude anything on the ground that it is hearsay.

The protection which the defendants will have is that they may be sure that on any vital matter in the case I shall not put in a mere summary method my findings, conclusions, or judgment but, where appropriate or necessary, I shall key to particular documents or other exhibits or pages of the transcripts such support as there may be for such findings, conclusions, or judgment as I enter.

With regard to the obections made on the ground of lack of authority, it is sufficient to say that although a statement which actually lack authority is inadmissible, the question [fol. 490] of its admissibility appears often in an inadequate setting if looked at alone. It requires a view of the

total situation, and the Judge can best make his determination when the total picture is before him.

With regard to the objections made on the ground of lack serving, not much can be gained by either including or excluding such testimony at this stage.

If the matter is in fact self-serving, it goes to its weight quite as much as to its admissibility, and an experienced Judge, having sat for 22 years, generally knows how much attention to pay to self-serving, biased, or otherwise improperly motivated testimony.

The same may be said with respect to objections on the ground of lack of authority. Objections to the form of the question are rarely of durable significance.

To be sure, if a question is put in the presence of a Judge and an objection is made to the form of the question, a Judge will usually determine whether or not it is worthwhile to intervene.

Where the objection is merely to the form of the question put in the presence of a Notary Public or some other surrogate for the Judge and the question has been put, the objection to the form of the question is usually of no such significance as to require a Judge reviewing the deposition to exclude the question and answer.

[fol. 491] Where the answer is not responsive to the question and objection is made on that ground, the whole problem is whether or not the answer is so plainly outside the bounds of the issues of the case and the nature of the interrogation that the answer ought to be disregarded.

Here again, a Judge faced with the total record and engaged in the task of drafting findings, conclusions, and a judgment, will no doubt be sufficiently sensitive to make a sensible disposition of the objection but a sensible disposition is better made at a terminal point in the case.

[fol. 492] Where the objection is on the ground that the witness has made a conclusion or that he has indulged in speculation, this objection, of course, is to be borne in mind by the judge at the end of the case. It need not result in a fly-specking immediate examination in open court or by written opinion at an intermediate stage.

Where statements have been volunteered, the principle is identical with that where the statement is nonresponsive or allegedly nonresponsive to a question.

Where objection has been made on the ground of best

evidence or some identical principle or analagous rule, the evidence is, of course, not barred on that ground but ordinarily is not received when better evidence is readily procurable.

No doubt the objection with respect to the best evidence rule is a thoroughly appropriate objection. In a trial where the testimony is offered in open court a judge often can, by a ruling from the bench, adequately deal with the matter.

Where the testimony allegedly violating the best evidence rule is also offered before a notary public, the question as to whether it so clearly is an inferior and undesirable type of evidence is exactly like the question whether hearsay evidence ought to be received.

Indeed, the so-called best evidence rule is not as much of a bar as the hearsay rule. It is no reason for a judge at a [fol. 493] stage intermediate in the trial to make a ruling unless it is so clearly a central point that the plaintiff or offering party might run such a grave risk that the best evidence rule will be applied against the offering party without any adequate opportunity on the part of the offering party to be apprised of the fact and given the opportunity to present other better evidence available or procurable by the offering party.

Parole evidence objections run not to questions of evidence per se but to questions of substantive law. If particular items constitute a violation of the parole evidence rule, no judge adequately informed will rest his findings, conclusions or judgment upon an item which by substantive law is properly excluded from his consideration.

Where the witness is alleged not to be competent, the problem is, of course, a vital one, but competence, again, like authority is something which requires a total conspectus.

Where conversations are objected to on the ground that they were with a third party and were not binding on the defendant, the question in a sense is first whether the third party, even though not named as a defendant, is indeed a non-named co-conspirator and whether there is independent evidence of that conspiracy.

[fol. 494] Where such independent evidence exists the third-party, though not named as a conspirator, is one who

under general principles of law has a matter of sound judicial discretion a right to be treated as impliedly authorized to make on behalf of his co-conspirators with regard to a pending conspiracy in connection with a subject of the conspiracy a declaration binding upon his fellow-conspirators.

Here again a sensible judge awaits a full picture before he determines whether or not a particular individual third-party was indeed a co-conspirator whether the conspiracy was at that time in effect and whether the matter related to the conspiracy. Were the matter being tried before a jury it would of course be necessary immediately to rule for the jury cannot be trusted with such testimony. The judge, however, must learn of the facts or the alleged facts at the very time he makes the ruling. No more prejudice inheres in his postponing the matter than in his determining at once inasmuch as the very assumption of the total proceeding is that the judge who is to find the facts make the conclusions, write the judgment, is the very judge who must make the ruling.

Where particular items of discovery allegedly antedate or predate the discovery period allowed by the Court, of [fol. 495] course such matters are not properly taken into account unless admissible under some other basis. This kind of objection, however, obviously relates to a relatively trivial aspect of the case, and it is unthinkable that this judge, at any rate, is going to make any findings, conclusions or judgment exclusively based upon something which predated the matters alleged in the complaint as it may be finally amended.

Where an objection has been made to a hypothetical question and the form of the hypothesis transcends the previous or subsequent testimony which would justify the hypothesis, needless to say the answer is not a properly considered item of evidence.

Whether a particular hypothesis is justified by the testimony theretofore or thereafter admitted is a complicated question requiring extensive reading of the record. A full reading of the record will take place at a later date. Interruptions at this stage need the analyses of dozens of pages of transcript. In order to decide whether a particular ques-

tion is or is not a proper hypothetical question is a plain waste of everybody's time.

Where the objection is that the witness has no records with him, the objection may or may not be valid, depending entirely on the so-called best evidence rule which, as already pointed out, is a matter of discretion rather than [fol. 496] iron inflexibility.

Objections on the ground of leading questions are always trivial and never in my opinion have resulted in a reversal error.

Of course, if the question is a leading question, the weight to be given to the answer goes to the sound discretion of a well-informed judge.

An objection on the ground that the answer is opinion or opinion and conclusion is not an objection which must inevitably prevail. Opinion evidence of course always should be scrutinized with care. The admissibility of an opinion is addressed to the sound discretion of the judge. As Wigmore and other authorities have often pointed out, opinion evidence is a guide line which does not constitute a barrier.

Suggestive questions, like leading questions, are certainly not desirable. Sustaining the objections to them during the course of a viva voce examination in open court, particularly in the presence of the jury, may become such, but, once testimony has been taken in a deposition and the sole ground is that the question put is leading or suggestive, the point is a relatively minor and not reversable matter.

The objection that a conclusion has been made without proper foundation is a question as to whether the conclu- [fol. 497] sion really is persuasive. The trier of fact is indeed not likely to give much weight to a conclusion which he sees is without any buttress and support.

To exclude the answer merely because it is a conclusion is to confuse admissibility with reliability, particularly in a case where there is no jury.

Having read all the grounds of objections set forth in Exhibits C for Identification—1 through 5, I am satisfied that all of these points are worth considering at a time that I am required to actually draft the findings, conclusions and judgment.

I shall no doubt benefit particularly from those aspects

of the objections which go to the weight of the testimony. I am not doubtful as to the general admissibility of the depositions as a whole. They are offered for particular points which it would take me a year to determine with a fine tooth comb, but I have no intention of engaging in a fine tooth comb process except where I finally decide that an item has such potential relevance and admissibility as by some chance being likely to influence me.

If it is likely to influence me, I shall most certainly consider with great seriousness each of the detailed objections already listed.

The objections as they are presented are overruled. The [fol. 498] rights of all the defendants are preserved. All of the exhibits offered by the Government are now admitted.

THE GOVERNMENT RESTS

Mr. Story: Your Honor, the Government rests.

COLLOQUY BETWEEN COURT AND COUNSEL FOR DEFENDANTS

The Court: The defendants may proceed.

Mr. McInerney: I just wanted to note, your Honor, that although Grinnell is first mentioned in the caption here, as a matter of convenience of counsel and witnesses, defendants' counsel had arranged among themselves to have the other defendants proceed first.

The Court: That is satisfactory with me.

Mr. McInerney: Thank you, your Honor.

Mr. Fritz: Before I address myself to that, may I say that my understanding of what your Honor has just said and my understanding prior to that time lead me to the conclusion at this time at the end of the plaintiff's case we need do nothing but simply reserve our right to make such appropriate motions as may be necessary at the end of the whole case.

The Court: That is up to you.

Mr. Fritz: Well, if your Honor will allow me to reserve that position——

The Court: I will allow you to reserve nothing. You may do what you want at the appropriate time.

Mr. Fritz: Well, at this time, not knowing what is in the case——

[fol. 499] The Court: Excuse me,——"not knowing what

is in the case"? You have been in possession of these documents for how long, Mr. Fritz?

Mr. Fritz: A considerable period.

The Court: How long?

Mr. Fritz: I can't answer that.

The Court: Six months at least?

Mr. Fritz: I would say so.

The Court: Thank you. I don't want any misrepresentation in any later court. I do not want it ever said that I did not give you adequate time to examine the testimony.

Mr. Fritz: I didn't say that, your Honor.

The Court: All right. I don't want any representations, because some representations made have given the impression—which is certainly not fair to this Court.

Mr. Fritz: Well, I think your Honor is stating again what your Honor said earlier, and may I simply say again and with the utmost respect that nothing was said or done by me that was intended in any way to do anything else except to protect the interest of my defendants, and that's the only interest I have ever had, sir.

The Court: Mr. Fritz, all that you have done is to say that a Judge who has evidence that came into the Court [fol. 500] necessarily was required to form an opinion, did form it to the extent necessary to make rulings, and on that basis you chose to file an affidavit of disqualification, the character of which may be the character of you but not of me.

Mr. Fritz: I respectfully except to your Honor's comments. I think my character is not in question in this case.

At this time I move to dismiss the complaint of the Government on the ground that it has failed to prove the cause of action purportedly pleaded therein or any other cause of action against my clients.

The Court: Denied.

Mr. Fritz: Exception.

Mr. McInerney: I would like for the record to make a similar motion on behalf of Grinnell Corporation, your Honor.

The Court: Denied. Excuse me——I thought you were through.

Mr. McInerney: I just want to clarify one thing. As I understand your Honor's rulings with respect to the evidence offered by the Government, they are now admitted

subject to a motion to strike at the end of the defendants' case?

The Court: At any time you may make a motion to [fol. 501] strike. I can't by any ruling now prevent you making a later motion. I have only ruled that at the moment the documents are in evidence.

Of course, in any trial at any stage event X may require a reconsideration of event A if the Judge ruled at the time that A was before him and not when X was before him.

Mr. McInerney: But as of the moment everything that has been offered by the Government has been found by the Court to be evidentiary and to be probative and to be worthy of admission in evidence.

The Court: Correct. You are right.

Mr. McInerney: If your Honor please, I have made my pro forma motion which is that the Government has not made out a prima facie case upon which relief can be granted against this defendant.

Thank you.

The Court: The motion is denied.

Mr. Fritz: If your Honor please, while it is true that I agreed with Mr. McInerney that he need not proceed first and that I would undertake that burden; and while it is likewise true that Mr. Story told me he would be finished with this case by one o'clock or at the end of the half-day session, frankly I'm not ready to proceed at this moment. [fols. 502-535] The Court: 1:30?

Mr. Fritz: Well, no, sir, I was going to ask your Honor, in view of arrangements that I have to make with certain people to be here, that I have a continuance until tomorrow morning.

I had expected, frankly, that we would be spending a little more time on the objections, but I think the matter came up I felt it was desirable perhaps to put the thing in in the form I did, and that took away a great deal of my time that I might otherwise have spent.

The Court: May I say to you I will grant you your request, but may I also say to you I do not know at what rate of speed you are capable of proceeding but I think by now you must realize the rate of speed at which I do proceed.

Mr. Fritz: I have some notion.

The Court: You should not count on dealing with a tortoise.

Mr. Fritz: I don't count on that at all, sir. All I count on is enough time to do what is right for my clients, and I expect your Honor will grant me that.

The Court: I will grant you until ten o'clock tomorrow morning.

Mr. Fritz: Thank you, sir.

(Recessed until Tuesday, June 16, 1964 at 10 o'clock a.m.)

[fol. 536] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

C.A. No. 2785 (R.I.)

[Title omitted]

Wyzanski, D. J.

Transcript of Trial—June 16, 1964

[fol. 537] The Court: I have not had a chance to read carefully the whole record. There are some very minor alterations that I should like to make in the long ruling which I made beginning at page 26 of the record yesterday and ending at page 37 of the record.

On page 27, the third full paragraph, the third sentence the word should be "may" not "made."

On page 28, at the bottom of the page, the comma should be struck and there should be inserted the words "is inadmissible, the question of its admissibility."

At the top of page 29, the comma at the end of the first line should be struck. It should be a period. The second line should begin with a I in the word "it."

On page 31, next to the last line, before the word "much" there should be inserted the word "as."

On page 32, the first full paragraph, the first sentence should read, following the words "per se" as follows "but to questions of substantive law."

Page 33, the first full paragraph, next to the last line, between the word "conspiracy" and the word "declaration" there should be inserted the particle "a," that is just the letter "a."

On page 34, the second full paragraph, the fifth line following the word "need" at the end of the line should appear the words "the analysis of."

[fol. 538] On page 35, the fourth full paragraph, the last sentence should have inserted in the next to the last line the words "the point" after the word "suggestive" and before the word "is."

On page 36, line 1, the word "persuasive" should be followed by a period; the word "if" should be struck; the word "the" should begin with a capital "T" and there

should be inserted the word "not" between the words "indeed" and "likely."

Those are the only changes which so far I have noticed ought to be made, and since the ruling is the equivalent of an opinion I think it important that it should read as nearly in accordance with what I deem to be correct as I can make it.

The defendants may now proceed.

Mr. Fritz: Mr. Guibert.

FRANCOIS GUIBERT, Sworn

Direct Examination

By Mr. Fritz

Q. Will you state your full name, sir?

A. Francois Guibert. The Francois is spelled with "c-o-i-s," with the French spelling.

Q. Francois Guibert?

A. Yes.

The Court: All right. And the last name?

[fol. 539] The Witness: Guibert, G-u-i-b-e-r-t.

The Court: Thank you.

Q. Your address, Mr. Guibert?

A. 99 Sunset Trail, Denville, New Jersey.

Q. Have you been subpoenaed by the defendant Alarm Companies to come here?

A. Yes.

Q. What is your business?

A. I am the general manager for the Newark District Telegraph Company of Newark, New Jersey.

Q. What is the business if the Newark District Telegraph Company of New Jersey?

A. It is in the electric protection industry, central station, local alarm, generally speaking all the services rendered for electrical protection.

Q. Had you had an experience in the field of electrical protection service prior to coming to the Newark District Telegraph Company?

A. Yes.

Q. What experience had you had?

A. I worked for the American District Telegraph Company for ten years.

Q. In what capacity?

A. I started in their manufacturing department, and then went in their inspection department. Then I was there [fol. 540] foreman for the plant department in Newark, New Jersey.

Q. During what period was that?

A. That I was foreman, do you mean?

Q. With American District Telegraph Company.

A. 1931 through 1942.

Q. Did you go directly then from the American District Telegraph Company to the Newark District Telegraph Company?

A. Yes.

Q. What had been the area of your operations while you were with the American District Telegraph Company?

A. Well, in the first part, the first time I worked there—that is, the first part of my appointment with them, it was the assembly of component parts in the manufacturing department.

Q. Of what, sir?

A. Everything that they manufactured. It would be mostly electrical devices, components, assemblies to detect alarms, and so forth.

Q. Did that include equipment used in central stations as well as equipment used on subscribers' premises?

A. Yes, sir.

Q. And then after you finished that phase of your work for the ADT, if I may just abbreviate the name, then you became, what, Foreman, did you say?

A. Well, after the manufacturing, I was an inspector [fol. 541] for installation on subscribers' premises. Then I became foreman.

Q. And as foreman you did what?

A. I did all the work that pertains to maintaining the installation, inspection and repairs, and so forth.

Q. What kind of services did that work which you did relate to while you were with the ADT?

A. Fire alarm, burglar alarm, automatic fire alarm, the whole protection industry.

Q. The whole gamut of the electrical protection service?

A. Yes.

Q. Then in the 1940s you left to go to the Newark District Telegraph Company, is that correct?

A. Yes.

Q. Is the New York District Telegraph Company an old concern?

A. The Newark?

Q. I meant Newark. Thank you.

A. Yes.

Q. Do you know when it was founded?

A. 1887.

Q. When you went to the Newark District Telegraph Company in the early 1940s did you immediately become general manager?

A. No.

[fol. 542] Q. What did you do there first?

A. I was superintendent.

Q. General superintendent?

A. Yes.

Q. Briefly what did that encompass?

A. It meant taking care of all the technical affairs and the physical operation of the operations of the whole company.

Q. Supervision of all the operating departments, I take it?

A. Yes.

Q. And all the personnel in those departments?

A. Yes.

Q. How long did you continue in that capacity?

A. From 1942 to the early '50s; I don't remember exactly.

[fol. 543] Q. But whenever that later date was, you became general manager of the Newark District Telegraph Company, is that correct?

A. Yes.

Q. And in that capacity your duties have been what?

A. They now take in the total running of the company. They include the financial affairs—well, general manager, period. That's it. The whole thing.

Q. Does that involve sales?

A. Yes.

Q. And supervision of sales?

A. Yes.

Q. Installations?

A. Yes.

Q. Surveys and inspection of premises?

A. Yes.

Q. Will you enumerate the types of electric protective districts the Newark District Telegraph Company had furnished since the time that you became general manager and as it furnishes them today?

A. Well, we sell burglar alarm, both of the central station type and of the local type, fire alarm; through the Newark District Telegraph Company we sell central sta- [fol. 544] tion fire alarm. Through the New Jersey Fire Alarm which is a subsidiary, we sell all the other types of fire alarm which would be either local or auxiliary or remote connected or the proprietary. The central station, of course, sells holdup alarms, industrial supervision types of electric protection. Well, we sell all of them.

Q. I think you have mentioned practically all, have you not?

A. Yes. Well, those that come to mind immediately, yes.

Q. In the previous interlude that we have had, Mr. Guibert, have you searched your mind to see whether you have stated all of the different types of services which the Newark District Telegraph Company renders?

A. I am afraid not. I was listening to the Court.

Q. Are you satisfied at this moment that you have enumerated practically all of them?

A. Yes.

Q. Without being unduly long about it, can you just give us a brief description of each of the types of services so the record will show what we are talking about? Suppose you start with the central station burglar and fire alarm and then from there go on into the other types of services?

A. The central fire and burglar alarm are systems which [fol. 545] have detecting equipment at the premises and recording equipment at the central station. They vary in type because of the construction or the amount of protection needed: the type of protection needed, the goods, so that if an alarm is initiated at the premises, it is received in the central station and the authorities that may handle the case, whether they be police or fire, are alerted and at the same time we dispatched our own representatives to either let the other people in or assist in any way they can.

Q. By what means and over what means, Mr. Guibert, is

the alarm which emanates from the subscriber's premises transmitted to the central station?

A. In the case of our company, either over lines which we lease from the telephone company or over lines which we own ourselves and run in ducts owned by the telephone company.

Q. Does your company own a substantial number of lines in the streets of the city of Newark?

A. Yes.

Q. Under what—under a franchise?

A. Yes.

Q. Something that goes back many years?

A. The contract that we have with the telephone com-
[fol. 546] pany is dated 1889.

Q. And I take it that the existence of the ownership of those lines dispenses with the necessity of Newark District Telegraph Company paying line charges where those owned lines are involved,—is that correct?

A. We pay the telephone company so much per mile for the occupation of the duct.

Q. But not for the use of the line?

A. No.

Q. That's a brief description of the central station, both burglar and fire alarm operation, is it not?

A. Yes.

Q. Will you proceed to tell us what the other types of services are, just briefly?

A. In the local alarm field—and the words "local alarm field" are usually applied to burglar alarms—whereby an installation is made on the premises and the alarm is given to the public by means of a bell which hangs outside of the premises.

Q. Did you say "public"?

A. Usually they expect the public to call the authorities if they hear this bell. That would be the description of the local burglar alarm.

[fol. 547] In the case of the local fire alarm system, that's mostly used for evacuation systems, where employees occupy floors of a building and in case of a fire someone pulls a fire alarm box and bells ring internally, to evacuate the premises.

In the field outside of central station you have connections to telephone answering services for both burglar and

fire alarm. You have connections to police headquarters, in many cases both for fire and burglar alarms, because in a lot of small towns the only office that is manned in a municipality twenty-four hours a day is the police station, so they accept both fire and burglar alarm systems.

Q. Could I interrupt you just a moment to make a little clearer the use of the telephone answering services in the electric protection field? How does that function, in other words?

A. Well, instead of sending a signal to a central office, they get one of the telephone answering services that accepts messages from doctors, lawyers, or what-have-you, to accept those signals, and they, in turn, will call the authority, if its police or fire or the owner, depending on what arrangements they make.

Q. Is that a fairly prevalent type of service, in your [fol. 548] experience?

A. Yes.

Q. Is it in other areas immediately adjacent to the Newark area to your knowledge?

A. Yes.

Q. Now then, you mentioned direct connected service and that is the service, I take it, from its name, which connects the subscriber's premises either to the police or fire department directly in the case of either burglar or fire protection. Am I correct about that?

A. That's correct.

Q. There is no intervening method of communication, it is a direct communication. Is that right?

A. No, no, not in those systems.

Q. Well, let me put it to you this way: In the case of a direct connected system, if a device on a subscriber's premises is actuated by an intrusion in the case of burglary or a fire in the case of fire, what happens to that signal?

A. The signal is automatically transmitted to the remote location where it happens to be and is taken care of by the personnel on duty at that place.

Q. And that is why it is called "direct connected"?

A. Yes.

[fol. 549] Q. Does your company furnish the service known as auxiliary service?

A. Yes.

Q. Is that fire or burglary?

A. Fire.

Q. And how does that function?

A. That uses the city-owned or municipal-owned fire alarm system as a means of transmission of the alarm to the fire headquarters.

Q. How are the subscriber's premises hooked into the municipal fire system?

A. By means of what we call a master box.

Q. Where is that located?

A. That can be located in the building or on the street at the curb, at the entrance of the building. It doesn't make too much difference.

Q. And how does that function in the case of a fire alarm on a subscriber's premises?

A. Well, the alarm system on the premises normally goes back to a control panel. The control panel has a device, which, when it is actuated, trips this master box either by sending its own electric current through that box or by using the current supplied by the City in its own lines to trip that box. There are two types.

[fol. 550] Q. Am I correct in assuming in the case of auxiliary service that if a fire started in a subscriber's premises that alarm is transmitted to the master box and, in turn, automatically over the lines to the Fire Department?

A. Yes.

Q. And so the auxiliary aspect of this is the tapping-in, so to speak, of the municipal fire alarms to the master box to the subscriber's premises, is that correct?

A. Yes.

Q. I see you smile. I think you think that is an inartistic statement, but is it substantially so?

A. Yes, that's the way it is.

Q. Now, Mr. Guibert, from the geographical point of view and distance-wise, what is the area of the operation of the Newark District Telephone Company in its rendition of these various services that you have described?

A. On fire alarm we can operate by operative of the fire rating organization to a radius of 20 miles. However, we don't do that, because seven miles from our office you will hit the Hudson River which divides us from New York State, and we don't operate in New York State. So we go 20 miles in some directions but not in others.

[fol. 551] Q. In the opposite direction, however, where you have no river barrier of that kind between states, do you actually operate the distance of 20 miles?

A. Yes.

Q. And that takes you out to communities such as what?

A. Using air line miles we go as far as Dover, New Jersey; Paramus, and south you would go to Plainfield and things like that.

Q. So from those designations I take it that you render service not only in the City of Newark proper but to a great many adjacent and contiguous communities. Am I correct about that?

A. Yes.

Q. Does that apply only in the case of your fire alarm service?

A. Well, the amount involved, yes. We don't reach that far for burglar alarm systems.

Q. What is the area or radius, so to speak, of your operations, with respect to burglar alarm service. I am talking now about central station.

A. The regulations are different. The regulations for a central office operation of burglar alarm systems are based on time, not distance. So that they would vary a great amount. In some directions we could go seven miles, [fol. 552] eight miles, and in another direction maybe only four miles, depending on the traffic.

Q. Who fixes this time element to which you refer?

A. The Underwriters Laboratories.

Q. Is that a requirement of the Underwriters Laboratories in order to allow credits for insurance premiums?

A. Yes, sir.

Q. What is that elapsed time?

A. For the highest certification it is ten minutes. The next one is 15 minutes. And they have a conventional one of 20 minutes. However, they do have some types of protection, such as vaults, safes—big safes, that is—where there is no time limit. A bank vault can be protected from our office at a considerable distance and receive the same credits as if it is next door to us.

Q. What is the area of your operation so far as the strictly local burglar alarm service is concerned?

A. That is determined by economic conditions.

Q. Will you explain that a little more?

A. The competition is keen, and after we go about 12 miles, maybe 15 miles, there is usually another company in that area which can sell local alarms cheaper than we can. So we are kind of restricted. So I would say 10 miles tc 15 maximum. The only time we go further is if we have [fol. 553] a customer that has a lot of accounts and he insists that we take them all no matter where they are.

Q. How about your direct connected service insofar as area of operation is concerned?

A. The whole State of New Jersey.

Q. The entire state?

A. Yes, sir.

Q. Would you explain that a little bit? I don't quite understand.

A. When you get to direct connected, that's because the community that is giving this kind of service to its taxpayers, if you put it that way, is often remote, and because the fire-fighting facilities are voluntary, they want every possible way of knowing when a fire condition exists immediately, or a burglary, if need be. So that the remote connection is quite prevalent in all the small municipalities, and the instrumentation of remote connected is difficult because of false alarms. So companies likes ours—and I can be proud about it—have developed sophisticated equipment that will not give too many false alarms. So we are called for to give them all over the state.

Q. Now then, you mentioned local fire alarms.

[fol. 554] Is that confined to any particular area so far as your company is concerned?

A. No. We will service local alarms anywhere in the state, also.

Q. That is local fire alarms?

A. Yes.

Q. And auxiliary service, which I think is the other remaining type that we mentioned: where is that furnished by your company?

A. I think maybe in 12 to 15 towns.

Q. Is it furnished in the City of Newark itself?

A. Yes.

Q. So you have the city of Newark and, in addition to that, some 12 or 15 towns, which I assume, —you correct me if I am wrong—are contiguous or adjacent communities, is that right?

A. Jersey City, Elizabeth, Paterson, Hackensack — all those towns.

Q. These are not towns, then, but they are very large municipalities or cities, are they not?

A. Some are called cities.

Q. Those that you mentioned?

A. Yes.

Q. In the area in which you render the various types of [fol. 555] services which you have described, are there other persons or companies also engaged in rendering some or all of those services?

A. Yes.

Q. Who are they?

A. In the central office there is the American District or ADT Company, and the Electro-Protective Corporation, EPC Company, and a relatively newcomer, Schirmer Protection or Schirmer Signal Company up in Bergenfield.

Q. Is that to your knowledge a new approved central station?

A. Yes, it is.

Q. How recent is the entry of that company into your areas of operation?

A. It is approved for burglar alarm only, and I would say the approval is about a year old.

Q. Had it been in business prior to that time on a non-approved basis, to your knowledge?

A. Yes.

Q. For how long?

A. Ten years.

Q. Now that, of course, relates only to central station service,—right?

A. Yes.

[fol. 556] Q. Are there other persons or companies who are engaged in rendering the other types of services that you mentioned in the Newark and surrounding areas?

A. Yes.

Q. Who are they and what types of service do they render?

A. There are about 15 such companies. If you want me to name all of them, I may miss a few.

Q. Which are the largest ones?

A. The largest one is Victor Alarm.

Q. What is the nature of its business?

A. It sells all types of services that are either telephone-answering service connected or pure local or direct connected.

Q. It does not sell central service?

A. I don't know about auxiliary. I don't know.

Q. But it definitely does not sell central station protective service, is that correct?

A. That's right.

Q. Do you know from your experience with the Newark District Telegraph Company of the area in which this Victor Alarm Company sells these various types of services?

A. They sell all over the state.

Q. What other companies come to your mind now out of this group of fifteen—the larger ones?

[fol. 557] A. Apex. In fact, the EPC Company, which is central station, has a very large local alarm and direct connected system in New Jersey.

Q. That is purely local burglar alarm?

A. Yes.

Q. Do they have any local fire alarm, in your knowledge?

A. Yes.

Q. And also direct connected?

A. Yes.

Q. Auxiliary service?

A. Yes.

Q. So that in the City of Newark, they furnish all the same types of services that you do, is that correct?

A. Yes.

Q. By you I mean the Newark District Telegraph Company.

A. Yes.

Q. That is likewise true of the ADT Company, is it not?

A. Yes. I don't know if ADT sells local alarm in Newark. I have never seen any.

Q. You have mentioned Victor, Apex. Are there one or two others? I am talking about noncentral station type companies.

A. The largest installer of local fire alarm companies is the Dictograph Company, but they operate under two or [fol. 558] three names: National Fire Protection, and so forth, in Newark, and we have always known them as Dicta-

graph. They install a large amount of home fire protection, institutional, like nursing homes, small hotels or large hotels, and so forth. They have a very large business in the local fire alarm direct connected fire alarm setup.

Q. What type of establishment, that is, business establishment, Mr. Guibert, uses these types of electric protective service, central station, burglar and fire, local burglar alarm, direct connected, and auxiliary fire alarm service?

A. Every type of commercial and industrial enterprise.

Q. Do you find among each different category of business enterprise service being rendered to similar institutions in some instances by central station and other instances by local burglar alarm?

Mr. Story: I object, your Honor, as leading.

The Court: Oh, that is all right.

Q. And in other instances by direct connected service, and finally, auxiliary service?

A. Yes.

Q. If you were to take from your experience in the city of Newark a given type of business enterprise with a certain [fol. 559] size, certain protection problem, certain inventory value, say, from your experience have you found that that type of establishment is in fact served by central station as well as by locals?

A. Yes.

Q. And by direct connected?

A. Yes.

Q. And by auxiliary?

A. Not in Newark—not direct connected in Newark, no.

Q. Auxiliary?

A. Yes.

Q. You say not direct connected in Newark, for the reason, I take it, that the city of Newark proper does not permit the connection into police and fire headquarters of the direct connections, is that true?

A. That's true.

Q. But you mentioned a number of areas which are contiguous including these large cities that you mentioned, to the City of Newark?

A. Yes.

Q. And are such connections permitted there or have I taken——

A. They are permitted with possibly the exception in Jersey City of fire connections. I don't know. I know that in Jersey City you can connect directly burglar alarms but I don't know about fire. I couldn't tell you this. But all the others do.

[fol. 560] Q. Could you give me from your experience in your operations in the City of Newark some few types of business establishments which to your knowledge—some of which to your knowledge use central station, burglary and fire, and others use local or auxiliary service?

A. Well, we have large manufacturing plants, like I mentioned before there is the Wiss Manufacturing Company.

Q. What is the name?

A. Wiss. They manufacture scissors.

Q. How do you spell it?

A. W-i-s-s.

Q. Thank you.

A. They have a plant that is a block square.

Q. Where?

A. In Newark. And they use an auxiliary system. They will not come into the central station.

Q. Have you tried to get them to?

A. Oh, yes. We have the American Insurance Company. Their vaults are connected to our central station burglar alarm system. Their fire alarm system is an auxiliarized system which goes into the City of Newark directly. You have the Clarke Thread Mills, which is a large organization, having the same auxiliarized system. We have a chain of liquor stores. They are called Home Liquor.

Q. Home Liquor?

[fol. 561] A. Yes. I think we have maybe 15 of their store in Newark. Three are connected to a central office but the others are local alarm.

Q. These places you mentioned which have auxiliary service and services other than central station, are they all within the area of your central station operations so that you could furnish central station service to them if they wanted it?

A. Yes.

Q. What is the situation with some of the smaller types of business enterprises with respect to the alternate use of one type or service or another?

A. I don't understand the question.

Q. Well, take the question of some of the retail stores, whatever you want to think of in that connection, jewelry, tobacco stores, clothing stores, department stores, things of that sort. Do some of them use central station service?

A. Yes.

Q. Do some use other types of service?

A. Some use auxiliary and some don't use any.

Q. Do you know, in the case where they do not use any, what they rely on for protection?

A. Guards.

Q. Are these instances I put to you to which you made [fol. 562] answer all within the area of central station protection service so it would be available if they desired it?

A. Yes.

Q. In the course of your experience, and I think you said it included, if not actual sales experience, supervision of sales, have you found in the City of Newark, when you have attempted to procure subscriber business for central station service, either burglar or fire, that you were confronted with bids by those offering local service and auxiliary service?

A. Yes.

Q. Is that a rare or a frequent matter?

A. Frequent.

Q. I suppose from the standpoint of—you correct me if I am wrong on this supposition—from the standpoint of direct connected service there may be, or there has been in the past, at any rate, some limitation on the ability of the municipal department to handle a certain number of calls beyond a given point; is that right? That is a foggy question. If you don't understand it——

A. I think I can answer it.

Q. All right.

A. The situation being what it is, all signals, whether they be fire or burglary, are brought into one locality, or one small room in these small municipalities, and in fact [fol. 563] sometimes large municipalities, and this has brought on a situation where the actual walls were covered with different types of instrumentation from each company that brought it in.

Q. You are talking now about the walls of the municipal fire or police departments, is that correct?

A. That is correct.

Q. All right.

A. And this to the point where we were asked by various associations—the Signal Superintendents Association—to devise a concentrated panel that would be flexible enough to accept all types of systems or signals so that the operator could sit in one spot and operate a large number of them.

Q. In a small space?

A. In a small space. That is being done right now.

Q. I beg your pardon?

A. We are doing that in quite a few places now.

Q. In other words, such a device has been perfected?

A. Oh, yes.

Q. Who did that, do you know?

A. Well, the New Jersey Fire Alarm perfected such a device about three years ago.

Q. When was it put into actual use and operation to your knowledge, approximately?

[fol. 564] A. Immediately, at that time.

Q. To your knowledge has that had any effect upon the increase of direct connected service?

A. I would have to surmise; I don't know.

Q. What have you observed in the Newark and surrounding areas, within this 20 mile limit, as to the expansion of the various types—the expansion and use, I mean, of the various types of electrical protective service in the last few years?

A. It has increased considerably.

Q. Generally?

A. Yes.

Q. Has any one of those services expanded more than others?

A. Yes.

Q. From your observation?

A. Yes.

Q. Which?

A. The direct connected.

Q. The direct connected?

A. Yes.

Q. Can you tell us a little more in detail what you know

about that expansion and how it compares with the expansion of central station business, for example, and why?

A. I think I can tell you why. It is a matter of cost.

Q. A matter of what?

[fol. 565] A. A matter of cost. After all, if a plant is located in the physical boundaries of a municipality, which may be one or two or three miles, and the municipality will accept the signal from them directly, why should they buy our service, which may be 15 miles away, with its cost of wiring, and so forth?

Q. The direct connected service accomplishes the same result and is cheaper, is that what you are saying?

A. In one direction, yes.

Q. What do you mean by "in one direction"?

A. Well, a lot of those systems are used because they may get some insurance recognition, a lower rate, and then of course that credit varies with the efficiency of the integrity of the system installed.

Q. Isn't the cost of direct connected service less than the cost of central station service?

A. Yes.

Q. Has there been a noticeable increase in the areas which you serve outside the City of Newark in the direct connected service in the last few years?

A. Yes.

Q. Do you know the reason for that?

A. The same reason: cost.

Q. Has there been a burgeoning of the population and incidental industries, and stores, and things of that sort, [fol. 566] in those areas?

A. There is bound to be more. If there is more of that, there must be more.

Q. I don't want to suggest what is not the fact.

A. Yes. The plants have been moving out to the suburban areas, outside Newark. Our own central office business now increases 20 to one. In other words, the suburban accounts brought into the office are 20 to one, that is brought in from actually inside the Newark area, in that same proportion.

Q. How has the direct connected service of your company increased in relation to the central station service?

A. A few years ago we did not give any at all. In the last five years, when we developed this piece of equipment, and

found that we had to do it to meet competition, we have several, and we have sold a lot of that equipment to other companies.

Q. To other companies?

A. Yes.

Q. Located in other areas?

A. Yes, of New Jersey.

Q. For the rendition of direct connected service in their particular areas, is that right?

A. Yes.

[fol. 567] Q. What other companies are there that engage in that activity, in that type of activity?

A. Well, there is the Victor Alarm, EPC, and the ATMO, a subsidiary of Kidde Corporation, Apex, Supreme, Colonial. There is a long list of them.

Mr. Fritz: I will not go into the question of revenues or subscribers with this witness, if your Honor please, because this is embodied, is it not, in a stipulation we have entered into, Mr. Story? It may save time if I omit them.

Mr. Story: I did not hear you.

Mr. Fritz: In our stipulation we have embodied the revenues from this company and the number of subscribers?

Mr. Story: Yes.

Mr. Fritz: I won't take the time to go into that.

Q. Mr. Guibert, there is one other type of protection service which I have not brought to your attention. You correct me if I am wrong. There is a type of service known as a proprietary service?

A. Yes.

Q. What is that?

A. They are installations that are usually put in large plants, where their own personnel is on duty 24 hours a day. [fol. 568] They consist of a miniature central station operated by personnel of the subscriber and the various alarm systems radiating from that.

Q. Does your company furnish that type of service?

A. Yes.

Q. Does it do it on an outright sale basis or on a lease basis?

A. Both.

Q. In the case of either or both, is there maintenance of

the proprietary system on the part of your company that is involved?

A. Sometimes but not always.

Q. Not always. Are there other companies in the Newark area which utilize the proprietary service?

Mr. Fritz: Let me withdraw that question.

Q. Are there other areas, including the City of Newark, in which proprietary service is offered by other companies?

A. Yes.

Q. And in connection with the attempt to procure central station subscribers, have you found it as a fact that the proprietary service has been a competitive factor?

A. Yes.

Q. Have you to your knowledge engaged in efforts to secure central station prospects which have accepted the [fol. 569] proprietary service instead?

A. Yes.

Q. Is this a matter of frequent or unusual occurrence?

A. It is not very frequent.

Q. Do you have any instances in mind in which central station service is available from your company but in which prospects you sought to sell central station service have taken the proprietary service?

A. Yes.

Q. Can you name some?

A. I named one before. It is called the East Newark Real Estate Company, I think. This takes in the complex of the old Clarke Thread Mills. We did render central service station to Banberger's up to a year ago. Now they have gone into the proprietary service system. This has reversed the procedure. We offered that system to Englehard-Clark Industries in Newark and to the Humble Oil in Bayonne but they took the proprietary service instead.

Q. Have you found that there have been in addition to that—you have said that in your efforts to procure central station service subscribers that you have been in contact competitively with those who sell local, auxiliary and other [fol. 570] types of services that you have mentioned, is that right?

A. Yes.

Q. And in some cases, I take it, you have been successful

in getting the contract and sometimes you have not been, is that right?

A. Yes.

Q. Have there been instances, too, in which you have had subscribers to your central station service who have converted from that service to other types of service?

A. Yes.

Q. To what other types of service have they converted in your experience?

A. Sometimes auxiliary but mostly to a local system. Sometimes they are direct connected. It is hard to tell. However, they did drop the central office connection for one reason or another.

Mr. Fritz: May I have just a moment, sir?

Q. If you were to take, say, a figure of ten solicitations for central station service, in your experience how many of them would you get, how many would go to other types of services?

A. How many would my company get?

Q. For central station service.

A. Two.

[fol. 571] Q. What would happen to the balance based upon your experience?

A. Well, some of the others might go to other central station companies, like ADT, EPC; others would go local, some may go auxiliary. In Newark none would go direct connected, of course. I would say the largest number in the burglar alarm field would be lost to the local alarm companies. In the fire alarm field, they would be lost to ATMO or Dictograph as a local installation.

Q. As a local installation?

A. Yes.

Q. Out of ten solicitations how many would you say would go to people not offering central station protective service? I know this calls for an estimate, but based upon your experience, what would you say?

A. I would say five.

Mr. Story: I object. That is too speculative. I think it is certainly clearly improper, and I object to it.

The Court: I agree it is speculative and I agree it is admissible.

Mr. Fritz: May I have the question read to the witness?

(The question and answer are read.)

[fol. 572] Q. And the other five?

A. Would go central office.

Q. Does your company render service of one kind or another in the electrical protection field to banks?

A. Yes.

Q. And is that service limited only to the City of New York?

Mr. Fritz: I'm sorry. I am a New Yorker. That's my trouble.

Q. Does that service to banks—is that service to banks limited to the City of Newark?

A. No.

Q. Or does it go beyond?

A. It goes beyond.

Q. Can you tell us something about the service you render to banks and its nature?

A. The banks buy mostly burglary protection or hold-up protection, night deposit box protection.

Q. I'm sorry, I did not hear the last part.

A. Night deposit protection.

Q. Night deposit protection.

A. Yes, which is quite a subject of attack in many cases. We give fire alarm service to some banks, nowhere near the amount we give to burglar alarm services. We protect [fol. 573] banks in Newark, Irvington, Nutley, Belville. It jumps all over. The banks, I don't know how they reason. You might have a security officer for a bank with many branches, and in this location he will demand central office, possibly due to the type of surroundings, and in another location he will have Mosler or Diebold give them a direct connection to a police station, and in another municipality beyond that he might want one brought into a central office. Whether he has no confidence in the police department, I don't know.

Q. When you say "he might" does that actually occur?

A. That does occur, yes.

Q. You don't have a bank—well, you may have for all I know—you do have service to a bank in a place called Caldwell, do you not?

A. Yes.

Q. How far distant is that from the City of Newark and from your central station?

A. About 12 miles.

Q. What type of service does that bank take from you?

A. Central office.

Q. Are there banks in other communities, including the City of Newark, between your central station and that Caldwell bank?

A. Yes.

[fol. 574] Q. And do you service some of those banks?

A. Yes.

Q. What kind of service do they take?

A. Well, some of them we have central office; some of them we don't have at all, and they go into police headquarters, and so forth.

Q. You said earlier, Mr. Giubert, that your company does sell local burglar alarms, is that right?

A. Yes.

Q. Do you sell a substantial number of them—I will withdraw the question.

The Court: That wouldn't help me any way unless you were prepared to tell me the exact number.

Mr. Fritz: Yes. "Substantial" is a bad word.

Q. But tell me this: In the areas in which you do sell local burglar alarms, do you sell them to the same type of institutions or business establishments from time to time, as those to whom you sell central protection services?

A. Yes.

Q. And are these similar risks involved?

A. Yes.

Q. And similar in respect to size and nature of protection problems?

A. Yes.

[fol. 575] The Court: I might just help you by saying that while I am no economist, I think quantitatively.

Mr. Fritz: Well, I understand that, and of course I have quantities in mind which I expect to supply to your Honor as we proceed.

The Court: I am not going to interfere with your method of presentation of the case. I might say to you, however,

that in general I am not sympathetic with these broad sketches of background which ordinarily involve a kind of material that does not require extensive question and answer method in an old-fashioned trial system,—what we are dealing with in the antitrust laws which is something which, to my judgment, is quite different from an ordinary trial and is quite different even from what the Prettiman report assumes it to be.

To a large extent the primary facts, at least, where there is no charge of corruption or malice or evil intent, can hardly be much in dispute, and the primary facts, adequately analyzed by the parties through pretrial depositions and the like, ought on the whole, except where there is some suggestion of wicked subjective intent or actual misconduct, to be within the framework of substantial agreement.

With respect to the secondary facts, sometimes referred [fol. 576] to as inferences or economic opinions or the like, there is room for a wide measure of disagreement and economists or their equivalent, competitors who are practical economists, are of some use, and there what really counts is the skill of the cross-examiner, not the skill of the direct examiner, in pointing out the fallacious quality of certain of the economic arguments impliedly or expressly contained in the testimony of the practical or the theoretical economist.

Either the defendants' counsel as cross-examiners or the Government's counsel as cross-examiners, can show up in the way that Justice Brandeis used to show up or would have shown up what is really lurking in the testimony as to secondary facts, as to economic opinion, and the like.

The third level beyond the primary facts and the secondary facts, are the legal rules. Inasmuch as we no longer live under the dispension of Chief Justice White and the Standard Oil and American Tobacco rule of reason is a thing of purely historical interest, we are faced with an attitude of predicting how far out nine movable men moving to the left will move.

That's all I am going to say.

[fol. 577] Q. Mr. Guibert, in addition to your association with the Newark District Telegraph Company which you described, are you a member of one or more of the industry associations?

A. Yes.

Q. And is your company likewise a member of those associations?

A. Yes.

Q. What are they?

A. The National Burglar and Fire Alarm Association, the Central Station Electric Protection Association, the Automatic Fire Alarm Association.

Q. What does the membership of those associations consist of, briefly?

A. Companies engaged in the furnishing of electric protection.

Q. Aren't there differences among the types of membership of the three associations?

A. The National takes all kinds of companies. All types belong to the National. The Central Station as its name says: Central Station people are the only ones who can belong to it. The Automatic Fire Alarm are people who install automatic fire alarms.

Q. And have you occupied any particular offices in any of those associations?

A. In two of them, yes.

[fol. 578] Q. What are they?

A. The National Burglar and Fire Alarm Association, and in the Central Station and Electric Protection Association.

Q. And do you meet frequently from time to time with the members of these various groups?

A. Yes.

Q. And discuss the problems common to the industry?

A. Yes.

Q. Does your company have a contract under which title to the equipment on a subscriber's premises is retained by your company?

A. Yes.

Q. Do you know whether or not that is a common feature of the contracts of all of the central station companies throughout the country?

A. Yes, it is.

Q. Do you know for how long that situation has existed, —that type of clause?

A. As long as I have been associated with the industry it has been the same.

Q. Based upon your experience as you outlined it here, do you have an opinion as to the importance, if any, of the retention of title by the central station company of the plant [fol. 579] on subscriber's premises?

A. Yes.

Q. What is that opinion?

A. My opinion is that to maintain the integrity of a service such as the one we render, which at best is one that is either forced on the buyer by law or by his conscience, it requires that all the components be very carefully selected, maintained, and serviced.

The Court: Like shoe machinery.

The Witness: Pardon me?

The Court: Like shoe machinery.

The Witness: I don't know anything about shoe machinery, your Honor.

Q. Well, let's assume that shoe machinery is used for the making of shoes. Would you assume that that is the same thing as the rendition of service to protect life and property?

A. No, sir, I would not.

The Court: But the shoe machinery people said it was the same as the telephone system and the fire alarm system when they were before me, so they saw the analogy although the witness doesn't.

The Witness: I would say this much. Maybe I'm an idealist. I don't know. But I know full well that when we have [fol. 580] caught an alarm, a fire alarm, an incipient disaster, and I go in the office in the morning and I have this report that the Fire Department was there in two or three minutes with very small damage, and I go and see the owners of the plant and the people are working at their benches, and so forth, there is a very great sense of personal satisfaction in the fact that these people are working because I did a good job.

And I think the same applies if a warehouse has not been emptied of the raw materials that go into the production of other stuff so that if a burglar drove up a truck and took it away, those people would be out of work that morning. I don't think I am in the shoe machinery business at all.

The Court: No, but somewhat like the telephone company.

The Witness: Well, the telephone company, if I may, your Honor—our services are produced by devices, automatic devices. Telephones are actuated by human beings.

The Court: That is only partially true.

The Witness: I think——

The Court: My understanding is that that is only par-
[fol. 581] tially true.

The Witness: I think the initial one has to be human.

The Court: Well, in each case the initial impulse is nonmechanical.

The Witness: In the telephone——

The Court: In any enterprise the initial enterprise or impulse is nonmechanical. Machines do not run of themselves, either yours or anybody else's.

The Witness: Right. The impulse that makes a man put the system in, I agree with your Honor, is certainly nonmechanical.

The Court: And he merely prepares it for a physical reaction other than a finger.

The Witness: Yes, sir.

Q. Mr. Guibert, you referred to the integrity of the service in your discussion a moment ago. Just what did you have in mind by that?

A. I have been associated with this business thirty years under difficult conditions, during depression times, in boom times, in normal times, and it has been my unfortunate experience in many cases to have to make difficult decisions because either the quality or the quantity of equipment in-
[fol. 582] volved in making a decision as to the adequacy of protection was not correct, good or however.

Whatever the reasons are, part of an economy such as we have today where all the components are important to us, I like to feel that my decisions have some bearing on a reputation of my company and my own personal satisfaction.

So that we find that if you can make the full decision concerning the integrity of a system, you can maintain that integrity. If you can't make that full decision, then you have this divided responsibility, divided willingness to pay or to acquire, and it doesn't work out, especially where we don't produce goods that can be stored on a shelf for inventory or that kind of thing.

The Court: Don't you think that that argument carried to its extreme is plainly contrary to the kind of decision under the antitrust law which had segregated, for example, the manufacture from the servicing of Pullman cars?

The Witness: I am not up on the law, your Honor.

The Court: All that I am trying to point out is this: From the witness box you are making an argument of an economic character which has been specifically rejected by the Su- [fol. 583] preme Court of the United States and the lower courts, and while no one wishes in any way to curtail your freedom of economic view, the extent to which your testimony is apt to persuade this trier of fact is somewhat limited in the light of the restrictions imposed upon him by precedents more recent than Chief Justice White.

Q. Mr. Guibert, is it your opinion that the service of the burglar protective type and the fire type which has as its object the preservation of life and property can be as adequately provided if the subscriber owned the equipment as it is now on retention by the central station companies?

A. No.

The Court: I haven't any objection to your going ahead, Mr. Fritz, and putting arguments through a witness' testimony on this kind of matter. If you think this is the way most effectively to call it to the attention not only of this court but of higher courts, I am going to allow you to do it.

I am not going to stop you for one moment. You may have as much rope as you wish. I, however, may well advise you that in my view what this witness is testifying to is not a set [fol. 584] of facts; it is a set of economic views which may be orthodox or heretical and as to which I would be able myself to make a convenient and quicker grasp from briefs as I ever would from the witness box.

You are free to do it as you like. If you think another group of judges, especially those higher in position than myself, would react differently, that's up to you. I can tell you I sat through almost as many antitrust cases as you have yourself.

Mr. Fritz: I think your Honor has had more——

The Court: And I know the difference between that which extends the record and that which sharpens it.

Mr. Fritz: I make only one observation about that. In so

far as I know, there is no case touching this case of title or its effect involving the rendition of service such as we have here and I have called this witness because I think because of his background and experience not only in his own business but in consultation with others throughout the country for a great many years, he has an opinion which is worthy of deep consideration on the question as to whether or not adequate service can be rendered in circumstances other than they exist at this time.

[fol. 585] The Court: Mr. Fritz, I am not going to prevent you from offering it. I am merely telling you that so far as I am concerned I know very well where I come out on this believing myself to be bound.

Now, you, of course, are free to build the record hoping that some other more enlightened judge will have a more sympathetic view. I am not saying that in any other sense than telling you that I know where I come out not because I have, as has been suggested, a bias except that kind of bias which emanates from prior experience in this field, the kind of bias which constitutes judgment.

Mr. Fritz: And because your Honor is enlightened I was simply trying to make the distinction that this is a case involving a vital service, and I know of no case which has treated of this subject before.

The Court: All I can say is that it is a fact which is present and which I can understand. It takes one line of testimony and doesn't take one volume. It is different. Is it a difference which is important? Is it in lawyers' language a distinction without a difference?

Mr. Fritz: My answer to that would be that it is a very serious difference.

[fol. 586] The Court: And my answer is that I think I understand five of the nine well enough to believe otherwise.

[fol. 587] Mr. Fritz: Could I ask your Honor's indulgence for a few minutes' recess at this time?

The Court: Surely. Fifteen minutes' recess.

(Recess.)

Q. Mr. Guibert, in response to one of my questions, I think, you mentioned that you thought that the maintenance of undivided responsibility in this matter of subscribers'

equipment was important in maintaining the integrity of the service. Did I understand you correctly?

A. Yes.

Q. What did you mean by "undivided responsibility"?

A. The equipment that we use, the functions vary at intervals, particularly in the fire alarm part of our business—only in cases of emergency or when it is being tested by our employees—and the judgment of the efficiency of that particular piece of equipment has to rest in an individual, so that we train our people for certain types of equipment, those we carry in inventory and install, to be the best that we can make, in determining whether that piece of equipment is working now and will continue to work; and if we have the full responsibility for its operation, the analysis of its operation and the decision as to whether it is going to be [fol. 588] costly or not costly to replace it, then the integrity of the system is in our hands.

If a man says, "I don't trust that piece of equipment," he may call up on the telephone or on the car radio and say, "Gee, I don't trust this, will you send me a new piece?"—there is no question about it. This is the nature of our business. So, therefore, we send him a new part and he installs it.

Q. Then you are suggesting that there should be trained personnel familiar with the intricacies of the equipment itself, is that right?

A. Yes.

Q. And does that equipment play a coordinated part in the whole unit of the protection services?

A. Yes.

Q. And by that I mean it is coordinated with the central station equipment, is it not?

A. Yes. And also with the equipment at the premises.

Q. And they are manufactured to operate as a unit?

A. Yes.

The Court: Mr. Fritz, what do you gain by these leading questions and answers over an extended statement of ten pages in your brief about the great merits of this system? Do you think you will persuade me one bit more by this kind [fol. 589] of testimony? Maybe you will persuade somebody else. And if you think so, all right. I just assure you it is a great ceremonial act, as far as I am concerned.

Mr. Fritz: Well, may I just point this out. The brief to

which your Honor refers, I assume, was the one we submitted on the 6th of April. If the Supreme Court, or to whatever court this case may go, if it ever goes anywhere, is going to have that brief before it, then I think our views are pretty well set forth.

The Court: I admit the brief in evidence forthwith as an exhibit. What is the letter?

The Clerk: D.

The Court: D.

(Brief filed by Mr. Fritz marked Defendants' Exhibit D and received in evidence.)

Q. Mr. Guibert——

Mr. Fritz: I beg your pardon. Am I interfering with the marking?

The Court: No, no. It is admitted.

Mr. Story: The Government has no objection, your Honor.

The Court: I would think that it is about time counsel learned tht arguments from the witness box, as Learned [fol. 590] Hand said, are generally in the hands of less competent people than arguments from counsel at the counsel table. And a judge of any consequence whatsoever listens at least as attentively to counsel who argues opinion of that character as he listens to witnesses who go through the form and ceremony of question and answer.

Mr. Fritz: I am offering the opinion of this man, who I think is an expert in the field, and I felt this Court would be aided by hearing what he has to say because what he has to say is based upon almost a lifetime of service in this field.

The Court: A lifetime of service has extended through the Chief Justiceships, beginning with White and including Warren, and he, who has not read of the changes during that lifetime with the diligence that a lawyer has read, hardly gives opinion of the same likely persuasive power upon a District Judge.

Mr. Fritz: Well, I am probably mistaken but I had thought that this problem of this type of service was a rather unique situation which had not come to the attention of the Court anywhere before.

The Court: I have no doubt that every case is unique, and the quality of the lawyer, as Thomas Reed Powell, is the [fol. 591] ability to think of that which is inevitably attached

to something else without thinking of that to which it is attached.

Q. Mr. Guibert, have you had any experience with the taking over of equipment owned by others which forms part of your opinion as you previously stated?

A. Yes.

Q. What is that experience?

A. It doesn't happen very often. In one case we took over a proprietary system where the owner owned all the equipment, of course, but his plant went on a one shift, or two shifts a day, as against three shifts a day, and he dismissed his guards and closed his central station, and we took over the operation of that system.

Q. What did you find on taking it over?

A. We found that it had not been maintained properly. We found that all the prints had been lost, that no one knew in fact where some of the components were, and we naturally had to spend a great amount of time tracing and replacing, and so forth, the equipment.

Q. As part of your experience or based upon your experience with the ADT organization and your own experience with the Newark District Telegraph Company, and your membership in the various organizations that you have [fol. 592] mentioned, and your acquaintanceship with the service generally throughout the country, based upon your contacts with all these different people, have you formed a judgment or opinion as to whether or not the ADT Company has made any contribution to this service industry?

A. Yes.

Q. What is that opinion?

A. The opinion is good.

Q. Upon what is it based?

A. They have always maintained a large staff of engineers who have developed new equipment. In my work as a representative of other associations, on joint technical committees, before the Underwriters Laboratories, or the National Board of Casualty Underwriters, I have come in constant contact with those people, and they have always been most interested in the development of new ideas and the perfection of old ones, and in short the advancement of the industry is based on modern thinking and the use of the newest pieces of equipment. So in the course of that work

they have come up with some very superior products that we all use or copy, if you want to put it that way.

Q. Have they lent themselves to the development of high standards of service in the industry, in your opinion?

[fol. 593] A. Yes.

Q. Mr. Guibert, sometime in 1960 did the defendant Holmes Electric Protective Company enter into an agreement to purchase the stock from the stockholders of the Newark District Telegraph Company?

A. Yes. I don't know about the year but——

Q. About that time?

A. Yes.

Q. That, of course, was in writing, was it not? I say, it was an agreement in writing, was it not?

A. Oh, yes.

Mr. Fritz: In a moment I would like to give your Honor the reference to that. It is marked as a Government exhibit.

Q. That contract was not consummated, was it?

A. No.

Mr. Fritz: May I just draw your Honor's attention to the fact that that exhibit shows on its face that the consummation of the agreement was subject to the approval of counsel. It is Government Exhibit 54. That is all the questions I have of this witness.

The Court: Is there any cross-examination?

Mr. Story: A few questions, your Honor.

[fol. 594] Cross-Examination

By Mr. Story:

Q. Mr. Guibert, what is the duration of your central station burglar alarm contract?

A. You mean——?

Q. I mean the length of time or the time for which the contract is in effect.

A. On the burglar alarm we signed a contract for one year.

Q. One year?

A. Yes.

Q. What percentage of your subscribers that you have on

your central station board today are burglar alarm subscribers?

A. 80 per cent.

Q. Mr. Guibert, what would say would be the average cost to the subscriber per month or per year for your local burglar alarm service?

A. Local burglar alarm service?

Q. Local burglar alarm service.

A. $72 a year.

Q. $72 a year?

A. Six dollars a month. I will have to explain. If we have the keys, that is. If we do not have the keys it is $5 a month. That would be $60 a year.

Q. $60 a year.

[fol. 595] A. If we do not have keys to enter the premises.

The Court: Which finding am I going to make with reference to that item of evidence, Mr. Story?

Mr. Story: Well, your Honor, I am trying to show the distinction between local alarm service and central station service. One of the primary things is the difference in cost. I can bring that out very quickly.

The Court: Do you think I am going to go through all the economics of that in the findings and conclusions? Do you think there is one chance in 1,000?

Mr. Story: Well, if your Honor would bear with me just a few minutes, I would like to put that question to him.

Q. Now, sir, taking your central station burglar alarm subscribers, what would be the average yearly charge to your central station burglar alarm subscribers?

A. $256.

Q. Mr. Guibert, if I were to tell you that during your deposition, when you gave us your number of subscribers and your financial data, that you reported in the year 1961 that you had 969 subscribers and that you had annual revenues of $453,386, would that be approximately correct?

A. Yes.

Q. Or was that correct at that time?

[fol. 596] A. Yes.

Q. If you were to divide that number of subscribers into your annual revenue, you would be able to get what the average central station subscriber would pay per year, isn't that correct?

A. Now you confuse me. When we, a person like myself——

The Court: Why don't you answer the question? The answer is No, isn't it?

The Witness: The answer is No, because——

The Court: All right. Nobody asked you why.

Q. So there would be a difference in the yearly cost of $60 a year to your local alarm subscriber and $256 for your central station subscriber?

A. Yes.

Q. Now, sir, how many of your central station protection subscribers in the last year discontinued central station protection service and asked your company or some other company to install local alarm service?

A. In the last year, 1963?

Q. Yes, sir.

A. I believe 17. I'm not sure. I can't remember. It was somewhere around that number.

Q. About 17?

A. Possibly, yes.

[fol. 597] Q. Do you know the reason why any of them changed?

A. Yes.

Q. What was the reason, sir?

A. An economic situation on their part.

The Court: You do know the reason? You mean you know the reason they gave you. But you don't know the reason, do you?

The Witness: No, sir, your Honor.

Q. What reason did they give you, Mr. Guibert?

A. That the central station was too expensive and they wanted something cheaper.

The Court: Interesting hearsay, but why am I going to pay any attention to that?

Q. Now, sir, you do engage in local burglar alarm service?

A. Yes, sir.

Q. During the last year, how many of your local burglar alarm subscribers discontinued that service and asked your company or some other company to install central station protective service?

Mr. Fritz: I object.

The Court: Sustained. Almost any objection would be good at this stage.

Mr. Story: Your Honor, I think the Government has a right to show the interchangeability between the services [fol. 598] now for our relative market position.

The Court: I see. If you think that is the basis on which you are going to win the case, if you are going to win it, go ahead.

Q. Taking your own local burglar alarm subscribers, how many of your own local burglar alarm subscribers discontinued local burglar alarm service with your company and asked your company to install central station alarm service with your company and asked your company to install central station alarm burglar service?

A. Not more than seven.

Q. Now, sir, in the last year, how many of your central station protection service subscribers discontinued central station protection service and asked your company to install direct connected service?

A. One.

Q. Could you give us the name of that company?

A. It is a company in a small town near Addison. I don't know the name of the company.

Q. How many of your central station protection service subscribers discontinued central station protection service and asked your company to install a proprietary alarm system?

A. In what time?

Q. In the last year.

[fol. 599] A. None.

Q. Within the last year, sir, how many of your central station protection service subscribers asked you to discontinue that service and asked you to install an auxiliary service?

A. Two, I believe.

Q. Would you name them for us?

A. I think one is sharpe, Dome and Smith, a chemical house. The other one I don't remember. You are asking me questions that I am not prepared to answer really.

Q. Well, after all, sir, you only have 969 subscribers, and the loss of a subscriber would concern you, would it not?

A. No, sir.

Q. If you lost ten subscribers would you be concerned?
A. Yes, sir.
Q. Mr. Guibert, at the present time do any of your subscribers own the alarm system installed on their premises?
A. One.
Q. Is that one system certificated or approved by the insurance authorities?
A. No.
Q. Mr. Guibert, your deposition was taken in connection with this case, was it not?
[fol. 600] A. Yes, sir.

Mr. Fritz: May I have the page reference, please?
Mr. Story: Excuse me. It is page 147 of the extract.
Mr. Fritz: Will you hold it just a moment?

[fol. 601] Q. In an effort to refresh your recollection, Mr. Guibert, I ask you whether or not these questions were put to you and whether or not you made these answers.
A. Well, is there any doubt about it? Why do you want to clutter the record with those things?

Mr. Story: Your Honor, I would like to show that this witness has changed his testimony considerably since this deposition was taken until the day when he has testified.
The Court: Why don't you just show him those pages instead of having it all written out in an expensive transcript.

Q. Mr. Guibert, I hand you the transcript of the deposition at page 18 of the original deposition and ask you to read this series of question.

Mr. Fritz: Mr. Story, is that a verbatim transcript, a copy of the transcript from the original deposition?
Mr. Story: It certainly is.
Mr. Fritz: All right.

A. I gather from your last remark——

The Court: No. Just look at it.

A. [Cont.] That's what I said, yes.

The Court: And is that your present view?
The Witness: My present view, in answer to counsel,

[fol. 602] whatever you call Mr. Story,—he said, "Now," and my answer now is one and the same as it was before. He said "now".

The Court: Remember you are not a lawyer in the case even though you have been acting like that, giving me opinions.

A. [Cont.] You said "now" and my answer to you now is one.

Q. Who owns his own system?

A. Yes.

Q. And is that a certificated or an approved system?

A. No.

Q. At the time this deposition was taken did you have a subscriber who owned his own equipment?

A. Yes.

Q. Was he an approved or certificated system?

A. Yes.

The Court: Now, Mr. Story, I am going to present to every counsel who appears for the Government in an anti-trust case a set of essays on lives of the painters, and I am going to call his attention to the story, When Boniface the Eighth wanted to have his painting done, he heard that the best painter in Italy was Giotto, and he sent a messenger to Giotto for a sample of his skill, and Giotto took out his [fol. 603] brush and did a freehand circle and sent it back, because a truly great painter does the simple, direct thing as evidence of his skill.

Mr. Story: Would your Honor give me just a moment? Your Honor, the Government has no further questions.

Redirect Examination.

By Mr. Fritz:

Q. Mr. Guibert, you told Mr. Story that your company's burglary alarm contracts have a one-year duration, did you not?

A. Yes.

Q. Do these also have an automatic renewal clause?

A. Yes.

Q. And what is the fact about the duration of time that

your burglar alarm subscribers on the average stay with your company? How long do you have them?

A. A long time.

Q. Well, what would that mean?

A. The question is complicated. By categories, some categories stay with us 25 years, other categories six months.

Q. Which category has the larger number?

[fol. 604] A. Those that stay with us an average of 12 to 14 years.

The Court: All right. Next witness, please.

RAY BRECHBILL, Sworn

By Mr. Fritz:

Q. Mr. Brechbill, will you state your full name and address, please?

A. My name is Ray Brechbill. I live at 59 Oak Avenue, Tenafly, New Jersey.

Q. You will have to keep your voice up, if you will, Mr. Brechbill, so we can all hear.

You are employed by the defendant, ADT Company, are you not?

A. Yes, sir.

Q. In what capacity?

A. General sales manager.

Q. How long have you been a general sales manager?

A. Since 6/1/62.

Q. Prior to that time what did you do?

A. Immediately prior to that time I was assistant to the general sales manager.

Q. Who was the general sales manager to whom you were the assistant?

[fol. 605] A. L. J. O'Brien.

Q. Beg pardon?

A. L. J. O'Brien.

Q. Does he presently hold an office in the company?

A. He is presently president of the corporation.

Q. As general sales manager of the company generally what are your functions?

A. My function is in control or department head of the sales organization of the company.

Mr. Story: Your Honor, I would like to bring up one point. It appears from the testimony up to now that this gentleman lives more than a hundred miles from this court or from the Rhode Island court, and that that was one of the witnesses that the defendants requested special permission of your Honor to bring here. They had adequate opportunity to take his deposition.

The Court: Now, Mr. Story, come. You don't think that I am going to interfere with Mr. Fritz' putting in everything he wants. I know perfectly well that he is going to for certain reasons try to fill this record, and I have made it clear, as clear as I can, that I don't think all this has much to do with it. I am going to patiently sit, and I think [fol. 606] you had better do the same.

Mr. Story: Very well, your Honor.

Q. Are there divisions for sales purposes of the company throughout the country?

A. Yes, sir. We have thirteen sales districts.

Q. What does the personnel of the sales organization consist of?

A. The personnel is: In each district we have a district sales manager. In one district we have an assistant. In one district we have both a district sales manager and assistant district sales manager, plus a small office force in each district.

Q. Just in a very general way what was your background in the company before you came in as assistant general sales manager?

A. I came to New York in 1950 from a sales district in Ohio. I had several staff positions. I dealt in market research for a period. I had various other staff positions. I had to do with the opening of two central stations back in my earlier years,—in New York, that is.

Q. Did you do any selling yourself?

A. I was a salesman, full-time salesman in Cleveland, Ohio, immediately following World War II until 1951 I [fol. 607] transferred to New York City.

Q. In your position as general sales manager and before that, have you become familiar with the nature of competition throughout the country which is encountered by ADT?

A. Yes, sir, I have.

Q. And what is the basis of your familiarity?

A. Both in personally selling and in supervisory jobs and my present jobs as sales manager.

Q. Presently in your position as general sales manager, are reports made to you as a matter of regular business routine?

A. Yes, sir, they are.

Q. And do you pay visits to your district sales managers on some kind of a routine basis?

A. I cover the districts every once at least in a year's time—that is, every district, and sometimes oftener in certain areas.

Q. Based upon that familiarity will you tell the Court what are the various forms of service which the company encounters throughout the country both of approved and unapproved variety, if there is any competition from the unapproved variety?

A. That runs a pretty wide range. I can cite several [fol. 608] if you would like to have me do that.

Q. Well, that may be a good way to do it.

A. In the late 1950's we lost close to 300——

The Court: That wasn't the question.

The question was: What kind of competition you face, not what the consequences was to you.

The Witness: I see. Well, through insurance——

The Court: No. Please answer the question.

The Witness. I don't believe I fully understand how it should be answered.

The Court: Then I am sure you will be helped by a further question from Mr. Fritz.

Q. What are the types of services which ADT encounters in competition in the endeavors to sell its own service throughout the country?

A. Direct connected, auxiliary connected services, insurance, numerous local and proprietary types of systems.

Q. Do you know of some specific instances that bear out what you have just told us?

A. Yes, I do.

Q. Well, will you give us a few of them?

A. The Ohio Liquor Store case—that which I started.

Q. I don't understand the reference to the Ohio Liquor Store case. Suppose you tell me what it is.

[fol. 609] A. We had close to 300 stores that we——

Q. You are saying Ohio Liquor, are you not?

A. Ohio Liquor, yes—State of Ohio. We lost all of those in the late '50s due to the changing of their method of protecting these stores from ADT to insurance.

Q. Did you have any personal familiarity with that situation?

A. Yes, I did.

Q. What was your connection with it?

A. I was in charge of the midWest region when this happened.

Q. With whom did you deal in behalf of the Ohio Liquor Authority, if that is who it was?

A. The Director of the Liquor Department in Ohio, a man by the name of Mr. Krout.

Q. How many stores were involved?

A. Between 260 and 270.

The Court: Close to 300?

The Witness. Between 260 and 270.

Q. And had your company, the ADT Company, had protective service in all of these stores at one time?

A. We did sir.

Q. What kind?

A. Local and central station and a very limited number of direct connected.

Q. And did a time come when the Ohio Liquor Authority [fol. 610] cancelled all of those service arrangements?

A. All but one.

Q. Did you talk to the head of the Liquor Authority about it?

A. Yes, I did.

Q. What did he tell you was the reason?

A. He advised——

The Court: He already made it quite plain. He can tell us what the State gave as the reason. Don't suppose for one moment I am going to make a finding that it was the reason.

Mr. Fritz: I agree.

Q. What reason did he assign to you for the cancellation of the contracts?

A. He bought insurance at a much lesser cost than they were paying ADT.

Q. And has that situation so far as the liquor system in Ohio continued down to date, so far as you know?

A. Essentially so. We have secured less than ten.

Q. Beg pardon.

A. We have secured less than 10 back since the loss.

Q. Have you been endeavoring to get them all back?

A. We have, yes.

Q. You got ten?

A. Less than ten.

[fol. 611] Are there any other instances that you have in mind?

The Court: Off the record.

[Off the record.]

The Court: I suggest that in order to expedite the matter, Mr. Fritz and associated counsel for the defense will between now and Monday next prepare an offer of proof with respect to the kinds of economic and like matters which have been covered by the last witness and undobtedly will be covered by this witness and subsequent witnesses.

In view of the fact that, as it seems to me, these matters will be in the view of the Supreme Court of the United States irrelevant to any final determination of the matter, I am prepared, subject, of course, to the actual proffer to predict that I will reject the proffered testimony and that I will, therefore, have established a record basis for the defendants to argue to the Supreme Court of the United States that the material which they would have tendered would have been material and should have been received and was erroneously excluded by the District Judge.

In order that Mr. Story and counsel for the Government may usefully spend their time between now and Monday, [fol. 612] Mr. Fritz has indicated that he will make available promptly to Mr. Story and his associates those actual exhibits which are to be annexed to the proffer of testimony.

Those so-called actual exhibits, of course, will be rejected by this Court if it rejects the proffer made by Mr. Fritz. They are, as it were, appendices to the proffer.

Is that clear?

Mr. Fritz: Could I make one suggestion?

The Court: Yes.

Mr. Fritz: Your Honor suggests,—and I take it it's no more than that—that we make such an offer by Monday. I wonder if I could modify it to this extent: that I have the balance of this day and perhaps a part of tomorrow to consider whether we can properly do that or not. I don't want to do it without——

The Court: If you are going to consider it, I want you to go ahead now and have some associate consider it while you proceed with the case. I am not willing to otherwise recess the case if you are not willing to make the decision now. I am not trying to say anything other than I don't want to waste time.

[fol. 613] Mr. Fritz: May I ask your Honor this? Does your Honor have in mind that the proffer would relate to all aspects of the case?

The Court: No. There certainly are things which clearly ought to be heard.

Mr. Fritz: That is what I am thinking about.

The Court. Absolutely. I am not trying to say you must offer your whole case that way. I am talking about that kind of economic argument which is addressed to what used to be called the Rule of Reason. That's all I am talking about.

That is, if what you rest your case upon is the peculiar situation of this industry and the necessity of otherwise prohibited practices being followed in this industry because of the connection between health, welfare, education, fire and other things and this particular set of alarms, then I am not in my view willing to hear all of that because I don't think the Supreme Court will hear anything on that.

If, on the other hand, what you are contesting is whether or not the Government's primary facts are true, that I want to hear that evidence.

I tried at an earlier stage to say that there were three [fol. 614] kinds of elements, it seemed to me, in an anti-trust case: Primary facts which are the actual conduct, verbally or in writing, of the defendants, and of those who are their employees, associates or others for whom they bear a responsibility; secondary facts which are, as it were, economic interpretation and opinion as to the significance and importance of the primary facts in the setting of the

industry and in the setting of the type of product involved and the like.

That is, they are the kinds of issues which are in one sense opinion issues. They are the normal province of economists. They are the kind of material as to which theoretically informed people may testify and practically experienced persons in the trade or industry may testify.

In either event they are not primary in the sense that they do not relate to the acts, letters, documents, words, and the like of the defendants and their associates. On the contrary, they are a method of measuring the value and importance, the justification or lack of it of the conduct covered in the primary facts.

Then there is a third level in an antitrust case which is the level of legal opinion, the rule of law, the kind of mate-[fol. 615] rial which is involved in per se doctrines, the kind of material which used to be involved in the Rule of Reason doctrine, the kind of material which is dealt with by judges in their opinions either in the Supreme Court or elsewhere.

With respect to the primary facts. I do not want you to make a mere proffer of evidence. I want to hear everything which relates to an act, a written or oral expression, or any other conduct of any defendant, any of the officers or employees of any defendant, any associate of any defendant including, of course, any alleged coconspirator.

But with respect to the second level, the level with deals with what I have called secondary facts, material regarding economic opinion or other value opinion, I see no reason not to allow that to be presented in the form of a proffer of evidence, because in my judgment that kind of material will not be regarded by the Supreme Court of the United States or by this Court following the Supreme Court of the United States as this Court understands the Supreme Court.

Have I made myself as clear as the subjects admits of? [fol. 616] Mr. Fritz: Well, I think so. I think what your Honor is saying as to this secondary phase of the matter—it relates essentially to our contention of what the market is in this case.

The Court: Oh, no, no. If you are talking about what is the market, that is not so. That is a primary fact. What

is the market is a very primary fact. And I don't want you to think that you can get through with that on a proffer of testimony. But I must say market does not turn on questions as to whether something is leased or sold. It is important to know what percentage of the market cover sales, or what percentage of the market is devoted to sales, or what percentage of the market is devoted to leases. But as to which is a better way of doing business, or which is riskier, that has nothing to do with what is the market. That has to do with a very different kind of question.

You are really trying to argue, if I understand you correctly, the same kind of thesis which was unsuccessfully argued in the DuPont Cellophane case, the case which Mr. Justice Harlan, when he was counsel, was involved in at one stage, and others.

I just don't think there is anything to that as a matter of law. But that does not mean that I do not want to know [fol. 617] what are the facts as to how much cellophane or how many cellophane sales there are and how many tin foil wrappers there are. I am quite willing, more than willing to take all the primary facts. But what the value of those facts is, economically or otherwise, seems to me not to be a matter which has to be covered by examination and cross-examination.

Have I made it a little clearer?

Mr. Fritz: I think so. I wonder if we could take the recess?

The Court: Surely. Meet at two o'clock?

Mr. Fritz: Yes.

The Court: That is all right.

(Recess.)

[fol. 618] AFTERNOON SESSION

Mr. Fritz: During the recess we tried to come up with a few thoughts. I feel that in the interest of a proper understanding that I ought to say to you what I think we can do, so that we do not come back on Monday not having done what your Honor might expect us to do.

There are two areas, large areas of proof which in part might be thought to be under the heading of the Rule of Reason but would also bear on the question of relief in this case, no matter how it was approached, and that is the

question of the importance of the retention of title not only from the aspect of the witness, who described it this morning, but from the aspect of pricing and the effect upon customers, concerning which we have some further testimony.

And also we had planned to offer to your Honor through three witnesses, and this is a combination, a very short statement of what they might say, evidence as to the contribution and importance by way of research and development to the industry as well as to the Government and national defense, and the high standards of service that have made it possible to render emergency relief to the [fol. 619] public in times of catastrophe, and things of that sort.

Now as we see it, during this short period we had to look at it, this will encompass the testimony of three witnesses and some portion of the testimony of one or two others but not in their entirety. And we have tried to make an estimate so your Honor will see whether it is worthwhile or not of the time element involved, but, of course, it would be only an estimate, our estimate of the time these witnesses would take to develop their testimony as we have it planned would be about a day and a half.

Now in addition to that, I have a further suggestion to make, and I know it does not fall quite within the category of what your Honor talked about this morning. It really enters into the question of market determination, but it is a little on the detailed side, and we possible can save some time.

I had planned to call here two or three witnesses, who are police chiefs of neighboring areas of this City, and who are only two out of about 60, as I understand it.

The Court: Sixty?

Mr. Fritz: Sixty, yes, your Honor. And who would only [fol. 620] portray a sample of what the competitive situation is as between direct connected service and central station service, and that, of course, I don't think could be a subject of much controversy, and I thought possibly we could give Mr. Story a prevue of what we propose to do, and maybe we can embody that in some type of offer and maybe save some time there.

In addition to that we had planned to call an official of

the New England Fire and Insurance Rating Organization bearing somewhat on the same topic. There I think that we would probably add another at least half-day's time.

Now this is about all that we could come to with any degree of certainty at this lunch period.

The Court: You have been very helpful. May I ask you whether if I did not interrupt you but allowed you to go straight ahead without any interruption, do you think you have more than five or six days of testimony?

Mr. Fritz: Oh, I think so, sir.

The Court: How much more?

Mr. Fritz: Well, I haven't really tried to total the number of days but there are—may I take a minute to see if I can come up with some such estimate as that?

[fol. 621] The Court: Surely.

Mr. Fritz: A rough look seems to say——

The Court: I understand.

Mr. Fritz: It seems to say a minimum of six days.

The Court: Well, I think in the light of that——

Mr. Fritz: That would exclude this, of course, that I was talking about before.

The Court: Yes. But if you had that it would make another day and a half or seven and a half days?

Mr. Frize: Two days, perhaps.

The Court: I think that in view of that I am going to withdraw my suggestion about a proffer because I think that if you can get in your testimony, as I believe you can, in a two-week period, that is eight days, it is worthwhile to have the record full enough so that if the Supreme Court does not take the view I think they are going to take they will have before them a complete record and not merely a proffer of evidence.

Mr. Fritz: Well, I think, frankly, we could make an ample substitute for that full treatment in a proffer cover-

[fol. 622] ing this.

The Court: No. I think I will let you go ahead. And may I say this. I think that with respect to items such as the value of this industry in a period of war, and so forth, I am going to discourage the Government from cross-examining on that kind of issue. If it be relevant, it is relevant. I don't think there is much to the point but I may be wrong. I don't, however, think that I could actually decide such a question without a very long and intensive consideration

of all kinds of things. It is quite enough that you offer the evidence.

I am telling you right now I am going to, with respect to that, say, "Evidence was offered with respect to this point but was regarded by the Court as of no consequence." That is the way I am going to treat it. And I am going to treat other items in the same way, that is, many that you referred to.

If you are going to refer to research, then I am going to say, "That is not the window glass era any longer." This is not the Appalachian Coal era any longer. This is Black, Douglas, Warren, Brennan, Goldberg, et al era.

Mr. Fritz: Does your Honor wish me to proceed?

The Court: Yes.

[fol. 623] RAY BRECHBILL, Resumed

Direct Examination.

By Mr. Fritz, Continued:

Q. Mr. Brechbill, this morning when we last talked to you, I think you had finished describing an illustration of the various types of protection which are encountered throughout the country by ADT as against its own types of service, and you enumerated or illustrated this by the Ohio Liquor Authority situation, did you not?

A. Yes.

Q. That is where we left it?

A. Yes.

Q. I think I asked you, or was about to ask you, if I didn't whether there were any other situations to your knowledge which bore on that same question.

A. A situation comes to mind, and that would be with direct connect systems in central station areas, particularly with banks, and that is being done on a very wide scale nowadays.

Q. Well, precisely what do you mean by that?

A. As an example, last year in Atlanta we lost approximately 20 banks, which we had connected to our central station. We lost them to either Diebold or Mosler, and they [fol. 624] were directly connected to police headquarters.

Q. When you say "we lost them" do you mean by that that ADT had central station protection service in

these banks and the banks canceled the contracts and took the direct connected service, is that what you mean?

A. Yes, sir.

Q. Are there any other instances besides that?

A. I think there are many. I can recite a few that come to mind. In Cleveland, the Cleveland Trust Company has approximately 70 branches. One of our representatives has told me that he knows of upwards of 20 that have direct connections, and we have less than five of those branches that have ADT central station service.

Q. How about the element of proprietary systems, does that enter into this, too, in your experience?

A. Yes, very widely.

Q. In what respect?

A. An example comes to my mind. Within the last 60 days we lost the American Seating Company in Grand Rapids, Michigan, to Notifier, and they purchased a proprietary system in lieu of our central station system. That is American Seating did.

Q. How many central station subscribers does ADT have at this time, approximately?

[fol. 625] A. Approximately 75,500 service contracts.

Q. That is not the same thing as subscribers?

A. No, sir, it is not. Some subscribers may have two or three services.

Q. Approximately how many subscribers have direct connected or local service?

A. Approximately 12,500.

Q. What is the rate of discontinuance in recent years of the ADT service contracts?

A. We think it has been awfully high.

The Court: That does not help.

Q. Well, is it higher now than it has ever been or not?

The Court: That does not help. I have to have figures.

Q. Do you know what it is in terms of figures?

A. Yes, I do.

Q. What is it?

A. Last year our discontinued annual service charges were approximately $5,400,000-odd, which was the highest percentage against revenue in force in the history of our company.

The Court: You have not told us what the percentage is.

The Witness: The percentage, sir, was 9. something, less [fol. 626] than 10 and greater than 9.

The Court: Of what?

The Witness: Of our total revenue in force.

The Court: Compared with what?

The Witness: I don't understand the question.

The Court: The previous year?

The Witness: The previous year was less than that—by percentage I can't give you the exact figure.

The Court: There used to be a man at Yale or the Taft School who used the word "thobbing" when he wanted to describe something which was not thinking but having to do with emotion. So far as I am concerned I think quantitatively and I am not in the least concerned with loose, general statements not backed up precisely with facts, percentages, dollars, incidents. Adjectives which characterize something may mean one thing to the speaker and another to the listener. High, low and the like tell nothing unless you know whether they are high or low with respect to something specific.

Q. Mr. Breckbill, I show you these two sheets and ask you if you will tell me what they are.

A. These are rate sheets.

Q. They are copies of your rate sheets, are they not?

A. Yes.

[fol. 627] Q. Are they copies of the current ones?

A. Yes, sir.

Q. There are two sheets. What does each relate to?

A. One is Central Station and one is Direct Connected Service.

Q. They both relate to annual service charges and advance service charges?

A. That is right. Direct-Connected and Central Service, Advance and Annual Charges.

Mr. Fritz. I offer these.

The Court: Received in evidence.

The Clerk. E.

The Court: Exhibit E, E-1 and E-2.

Mr. Fritz: Your Honor does not care to see this at this time?

The Court: No, not at this time.

(Document entitled Minimum Basic Service Charges Effective 1-1-60 marked Defendants' Exhibit E-1; Document entitled Minimum Basic Advance Service Charges Effective 4-1-62 marked Defendants' Exhibit E-2, both received in evidence.)

Q. What is the short description given to these in the company, these two sheets, E-1 and E-2?

A. Minimum Basic Rates.

[fol. 628] Q. Sometimes referred to as the MBR?

A. That is right.

Q. What use is made of these rate sheets or MBR sheets by your department?

A. By my department, that is used as a national guide, a national norm figure for which we adjust our prices to meet various conditions.

Q. I take it that your department has nothing to do with the actual determination of the prices shown on either one of these sheets, is that correct?

A. That is true.

Q. Are these sheets distributed to your District Sales Managers, for example?

A. Yes, sir, they are.

Q. Are they in turn by them distributed to anybody else, or is that the level at which it stops?

A. They are also distributed to the salesmen.

Q. What is that?

A. Also the salesmen.

The Court: And in percentage terms, 90 per cent of the time are the prices followed?

The Witness: I don't think I can answer yes or no to that question.

The Court: You would be very surprised if there was as [fol. 629] much as a ten per cent departure, wouldn't you?

The Witness: I could give you better figure of average departures over the system. I don't think I could answer your question actually.

The Court: Well, what is the answer you would give if I had asked the proper question?

The Witness: I don't say that you should have asked this question. I think I could answer by stating that last year our

annual charges, the national average was in the 93 to 94 per cent of 100 per cent, and the advance charges was in the 78 to 80 per cent bracket. Whether or not that answers your question or not, I am not sure.

Q. I show you that this paper headed Delegation of Authority, which has already been marked by the Government as Exhibit 212. Are you familiar with that?

A. Yes, sir, I am.

Q. Do you know how that is used in the field?

A. Yes, sir.

Q. How is it used?

A. This delegation of authority is extended——

Q. Would you keep your voice up please?

A. It is extended in the field to the District Sales Managers who have certain authority for accepting business.

[fol. 630] Q. Now there are provisions in that Delegation of Authority with regard to the reduction of prices of the annual service charges and advance service charges to certain percentages lower than the specified unit prices in the MBR?

A. Yes, sir, that is correct.

Q. What is that?

A. For the District Sales Manager it is 60 per cent of Advance and 80 per cent of Annual.

Q. And, according to your experience as general sales manager and as assistant sales manager, has this reduction been made from time to time?

A. Yes, sir, it has.

The Court: In accordance with the percentages you already indicated, in answer to my question?

The Witness: The percentages I indicated—these figures would be worked into that total, yes, sir.

The Court: So that it would be fair to say modification under this authority occurs in some types less than ten per cent and in some types more than ten percent and less than thirty per cent.

The Witness: I would say that is correct.

Q. Are you familiar with the types of situations under which the reductions are made?

[fol. 631] A. Yes, sir, in many case I am.

Q. What are they?

A. Competition, price resistance, a subscriber might be under a distress business condition where we would make a concession. The competitive aspect might relate to insurance costs, night watch costs. There are a number of cases where we might make some price concession.

Q. Has the ADT Company under your guidance, so far as the sales organization is concerned, and under your predecessor, Mr. O'Brien, had an annunciated express policy concerning the use of prices in the field with respect to competition?

A. Yes, sir.

Q. How has that policy to your knowledge been imparted to the people in the field, if you know?

A. Well, it has been imparted—Mr. O'Brien had a Sales Managers' meeting——

The Court: Don't tell us about Mr. O'Brien unless you happened to have been serving under him. Were you?

The Witness: Yes, sir, I was.

The Court: All right. Would you tell us what you observed and not what he did.

[fol. 632] The Court: What you saw him do.

The Witness: Mr. O'Brien in my presence conducted both meetings in New York and throughout the field, and in those meetings instructed our field people regarding meeting price competition. He has informed them, as I have——

The Court: No. Keep it separate. He informed them what?

The Witness: He informed them that they could meet competition but not beat competition, your Honor. He further——

The Court: Are those his words?

The Witness: Yes, sir, just precisely so, sir. They are my own words, too.

The Court. No. I want to know what his words were.

The Witness: They were his words, sir. Normally—he instructed that they would not completely meet competition. Our service acceptance is such that we normally do not have to go as low as a competitor's price.

The Court: Now don't give us your philosophy for the moment. Just stay within the narrative account of what you observed him doing or saying.

[fol. 633] The Witness: He instructed the district sales

managers that they could meet but not go lower than competitive prices.

The Court: But not beat?

The Witness: That is right,—meet but not go lower than competitive prices.

The Court: Now, were his words "meet but not go lower" or "meet" but not "beat"?

The Witness: I have heard him use "meet" but not "beat."

The Court: Then stay with what he said.

Q. Now did I understand you to say that there were some further instruction, and correct me if I am wrong, about not getting down to the competitors' price because of the type of ADT service?

The Court: I am not going to allow you to lead with respect to this under any circumstances. Anything that was said I will allow you to inquire about——

Mr. Fritz: I will withdraw it.

The Court: But not to put words in the witness' mouth.

Mr. Fritz: I thought that that is what he said.

Q. Was there anything further that Mr. O'Brien had to [fol. 634] say that you know about, that you heard him say on this subject?

A. I have heard him say numerous times that in lowering prices for competitive reasons, that we would not normally go as low as a competitor's price.

Q. Did he say why?

A. In many cases the competitor's price was too low for us to——

The Court: Now just a moment. Did he say why?

The Witness: I would say that he said that in many cases the competitor's price was lower than we would be interested in going.

Does that answer your question?

The Court: Whatever he said answers the question. I was not there.

Q. Were there any instructions that you know of given by Mr. O'Brien to the field concerning dealings with competitors out in the field?

A. Yes. His instructions were to the effect that we should not have meetings or dealings with competitors.

Q. Meetings or dealings with competitors?

A. Yes, sir.

Q. Well, you mean, I take it——

[fol. 635] The Court: No, you don't mean what he takes it. Find out what he means.

Mr. Fritz: I agree with your Honor.

Q. Was it explained to the people in the field by Mr. O'Brien, according to your knowledge, what he meant by not dealing with competitors?

A. It meant not having meetings.

Q. No. What did he say, not what it meant? What did he say?

A. He instructed them not to meet with them—unless you would meet a man on the street that you would know and bid him the time of day.

The Court: Did he say anything as to how people were to learn the prices of competitors?

The Witness: Yes, he did.

The Court: What did he say?

The Witness: We learned prices of competitors by seeking this information at the market place with our customer, with our prospect.

The Court: Did he say anything else on that subject?

The Witness: Not that I can recall, sir.

Q. Now, have you, yourself, issued instructions of similar content?

[fol. 636] A. I have issued written instructions. I can't recall how many times. Since the first of this year I have issued verbal instructions in my travels to the various districts.

The Court: When did you take office as Mr. O'Brien's successor?

The Witness: 6-1-62, sir.

The Court: June 1, 1962?

The Witness: Yes, sir, two years ago.

The Court: When did you first put out any written instructions in your new capacity?

The Witness: I could not be specific on that. I know I put out instructions in the early part of this year.

The Court: As far as you remember, you did not put out any in 1962 or 1963 in writing?

The Witness: I am inclined to think that I did, but I could not recall that, sir. I could not be specific whether I did or not. It is something that goes on considerably in our company, such instructions.

The Court: Don't you keep a "bible"—instructions sent out from time to time from your office?

The Witness: Quite a few instructions, sir, go out from my office from time to time.

[fol. 637] The Court: Don't you keep a folder, loose-leaf or otherwise, in which instructions are memorialized, or kept, or recorded or indexed?

The Witness: We do but I can't——

The Court: And you haven't got such a copy?

The Witness: I am not conversant with every item in it.

The Court: No. But haven't you got such a copy?

The Witness: We would have in my office, sir, yes.

Q. I show you these two forms and ask you whether they have been in use in your company? One is marked Form 400 and the other 701.

A. Yes, sir. They are now in use in our company.

The Court: I did not hear you. I am sorry.

The Witness: They are now in use with our company.

Q. How long have they been in use, taking them separately? Take the 701 first.

A. I would say as to the 701 since—I am guessing——

Q. Don't guess. Give us your best knowledge on the subject.

A. My best knowledge is since the middle 1950's.

[fol. 638] The Court: And is it still in effect?

The Witness: Yes, sir.

The Court: Please mark that as an exhibit.

Q. And the Form 400, how long has that been in use?

A. If I remember correctly, some time during the early to middle '50s, according to my best judgment.

The Court: Please mark that as the next exhibit. What are they, F and G?

The Witness: Yes, sir.

(Form 701 entitled Competition And/Or Price Resistance Report marked Defendants' Exhibit F and received in evidence; Form 400 entitled Contract Data marked Defendant's Exhibit G and received in evidence.)

Q. Will you describe briefly, Mr. Breckbill, how that Form 701 is used and by whom and what is done with it?

A. The Form 701 is a competitive—competition report. It is filled out by the salesman indicating the price we used and the price or prices used by a competitor or competitors.

Q. That is what the form on its face is designed to do, is that correct?

A. Yes, sir.

Q. And in what circumstances is the submission of the [fol. 639] form by the salesman—a form of that kind required?

A. It is required in all cases where the price is deviated downward from the norm, from the MBR.

Q. Isn't it required in the case where there might be an upward deviation?

A. We require—by our instructions on the 701, that is not explicitly spelled out on the upward side. However, my instructions do require any explanations of any charges higher than the so-called MBR or norm figure.

Q. So that you require the filing of this so-called Competition Report No. 701, Exhibit F, in all cases of deviation from MBR, is that correct?

A. From MBR downwards.

The Court: What goods, services and the like are covered by these forms, please?

The Witness: Sir?

The Court: What goods, services and the like are covered by these forms?

The Witness: This form enables us to know what——

The Court: No. What kinds of competitive goods, competitive services and the like are covered in the reports on these forms?

Q. Do you understand the question, Mr. Breckbill?

A. I believe I do. Any protection service that is offered [fol. 640] in competition to our own service.

The Court: Any physical goods?

The Witness: It would be a protection service.

The Court: No. Is there any case in which there is a transaction involving the sale of a tangible article which is reported on this form?

The Witness: Yes, sir.

The Court: What tangible articles, which are sold, are reported on these forms?

The Witness: A proprietary system that we sell outright would be reported on this.

The Court: I see. The whole of the system, that is the physical layout apart from any service?

The Witness: A proprietary system that we would sell, for instance.

The Court: Now you see you are using the word "system."

The Witness: Yes.

The Court: In the sense of including not merely tangible articles but services together with those tangible articles constituting in toto a system, aren't you?

The Witness: I am thinking of——

The Court: Aren't you?

[fol. 641] The Witness: No. I am thinking of a tangible system without a service.

The Court: I see. So it is equipment?

The Witness: Yes. We would report that on this as well.

The Court: You would report the sale of equipment without any service on that form?

The Witness: We would, sir.

The Court: All right. Now is there a schedule as to the charge for that equipment, such as you described a little while ago, as normal pricing?

The Witness: Yes. There is a schedule for the make-up of that.

The Court: All right. So that there is a normal price for the equipment and there may be an occasion on which the equipment is sold for more or less or the same figure as the norm, is that right?

The Witness: Yes, that is true.

The Court: And when it is not sold at the same figure as that which is set forth in the norm, are you aware that there might be questions which would arise under the Robinson-Patman Act?

The Witness: I would say that we are, sir.

The Court: And have you instructions to your salesmen [fol. 642] with respect to such problems as arise under those circumstances?

The Witness: I would feel that we do have, sir.

The Court: And where are those instructions? In writing?

The Witness: Yes, sir.

The Court: Where are they?

The Witness: They would be in our commercial instructions. Again I have none of them here. But we have advised our people with reference to competitive pricing.

Q. Mr. Brechbill, his Honor just questioned you about the sale of a system. Could I go back for a moment? You have told us this morning that your company, the ADT Company, sells central station protection service, is that right?

A. That is correct.

Q. And it also offers direct connected service in which there is no sale of equipment to a customer, is that correct? [fol. 643] A. I beg your pardon?

Q. Direct connected, I say, does not involve the sale of equipment.

The Court: It is like the telephone subscribers' relationship with the telephone company?

The Witness: That is right.

Q. The only instance in which sales are made by the ADT Company is in connection with what you were just discussing with the Court, namely, the proprietary system, isn't that right?

A. That is essentially true.

Q. What?

A. That is essentially true.

The Court: What does the word "essentially" mean in your answer?

Q. That is what the word comes from——?

The Court: What does the word "essentially" mean in your answer—"That is essentially true"? What is non-essentially false about it?

The Witness: The reason I used that term is because I think in a very limited number of cases we have sold a

system to the subscriber that has a connection to our central station.

[fol. 644] Q. What I want to get at is this: Isn't it a fact that these proprietry systems are usually custom made? You don't keep them on the shelf, do you?

A. We do not, sir, no.

Q. And do you have a fixed price list for a proprietry system in ADT?

A. No, we do not.

The Court: Well, I don't understand then how you could answer as you did my question.

I asked you whether this sale of a system which you defined as an equipment was or was not in accordance with a norm which you had previously referred to, and I asked you whether there were cases where it sold for more, less or the same as the norm, and I do not see how you could have answered any of these questions if what you were talking about was a custom-made equipment system not normal in its character.

Can you explain that?

The Witness: What I meant was this. Perhaps there is a misunderstanding. I meant that for such custom-built systems we have normal procedures of charges based on costs.

The Court: That is obviously not what I asked. I asked you whether there were cases in which you sold tangible [fol. 645] articles, and you said Yes, there were such cases, to wit, systems—to wit, equipment.

I then asked you whether in selling such equipment or system you sold with reference to a norm and you said Yes.

Then I asked you whether there were cases where you sold above or lower or at the same level as the norm, and you said Yes. And the only fair inference which any court could draw from that was that you were talking about the sales of standard articles.

Moreover, I asked you if you realized if there was a Robinson-Patman problem, and you said there was, and, of course, I am sure you know enough about the Robinson-Patman Act to know it has nothing to do with situations where there is a sale of a particular custom-made article for one particular purchaser.

So you either have misled me or misled Mr. Fritz or maybe both of us.

The Witness: I must plead ignorance there, your Honor. I had reference to the norm figure based on markups over cost, and, if I misled you, I am sorry. I didn't intend to.

The Court: How is that a Robinson-Patman question?

The Witness: I am not as familiar, sir, as you are.

[fol. 646] The Court: Well, I am not familiar with it. I always find myself in difficulties with regard to it, but I know it doesn't apply to a single custom-made article made for a particular customer.

Q. Did you know that, Mr. Brechbill?

A. No, I did not.

Q. These forms 400 and 701 that you have there before you, Mr. Brechbill: You said the 701 was a competition form that is filled out by a salesman to indicate the reasons why he deviated from MBR—correct?

A. Yes, sir.

Q. When he fills that out, does he send it to your office in New York?

A. It is sent along with the contract, if we secured it independently, if we don't secure it through the District Sales Manager, and to our offices in New York.

Q. Is the other form, Form 400, also filled out by the sales representative?

A. It is, sir.

Q. And is that also returned with the contract?

A. That accompanies the contract on submittal, yes, sir.

Q. And in the usual course of the company's business, is it required that the salesmen fill out those two forms in accordance with the way they are laid out?

A. That is right.

[fol. 647] Q. Are those forms as they come in used by the company to determine whether or not the contract submitted will be approved?

A. That is right.

Q. You told me, did you not, about the banks in the Flint, Michigan, area that were taken over in part by Diebold—or have you?

The Court: Yes.

A. I mentioned several banks. I don't believe I mentioned the case in Flint.

Q. You have mentioned the Atlanta situation.

A. I did, sir, and I believe I mentioned the Cleveland Trust at Cleveland.

Q. And the Ohio Liquor Stores,—right?

A. Yes.

Q. I show you this book, which is marked on the face of it, "ADT Vocational List of Subscribers." Are you familiar with that?

A. Modestly so, yes.

Q. Well, are you sufficiently familiar with it—I don't want you to be immodest, about it, but are you sufficiently familiar with it to tell me whether or not it is a document that is made up by the company in the ordinary course of its business from time to time?

[fol. 648] A. I am, sir. The answer is Yes.

Q. How long to your knowledge has the company been preparing a booklet of that kind?

A. It dates back to the start of my time with the company, to the best of my knowledge.

Q. And that was when?

A. 1935.

Q. Not to try to summarize the book but, in general, what does the book purport to show?

A. It lists our subscribers by vocation in the various localities throughout the country.

Q. By "vocation" you mean the nature of the business establishment to which the service is rendered, do you not?

A. Yes, sir.

Q. And it shows itself by locality where the company renders service, is that correct?

A. Yes, sir.

Q. And in addition to that, it shows for each type of such business establishment in such city the type of service which is rendered, is that correct?

A. Yes, that is correct.

Q. And it covers the entire area of ADT operations on that basis, is that correct?

A. Yes, sir.

[fol. 649] The Court: May I ask whether somebody has undertaken to organize the material in there so in tabular form I know what is in it?

Mr. Fritz: Well, we are undertaking to do it, but, frankly, with the press of time we haven't yet done it.

The Court: At some stage I think that it must be presented with a summary in tabular form. I will admit the exhibit now.

Mr. Fritz: May I mark it now?

The Court: Yes. It is admitted as H, and I will receive Exhibit H-1 at a later date, a table telling me what is in there. A telephone book by itself is of very little use.

Mr. Fritz: Yes, your Honor, that is right.

["Vocational List of Subscribers of ADT", marked Exhibit H.]

Mr. Fritz: That is all I have from Mr. Brechbill.

The Court: Is there any cross-examination of this witness?

Mr. Story: I have one question, your Honor.

[fol. 650] Cross-examination.

By Mr. Story:

Mr. Brechbill, you have indicated that you have instructed your people to try to determine the prices of your competitors when you are in a competitive situation?

A. Yes.

Q. What is the main source of the information upon which they have to rely?

A. Through our prospect or subscriber.

Q. Have you found your prospects when you have a bidder bidding two people together to be very reliable in giving you the correct information?

A. Do you want me to answer that Yes or No?

Q. I want your answer.

The Court: I don't see how it can be answered yes or no. I suppose it depends upon the customer and a lot of other things.

A. That is why we insist in numerous cases of having something bona fide as an actual copy, which we get in a number of cases.

Q. Do you insist that they see the competitor's bid?

A. We insist where possible that they get it and submit it with the papers to us, and in many cases they do that.

Q. Do you do it in all instances, see the copy of your [fol. 651] competitor's bid?

A. No, not possibly.
Q. You don't do it in fifty per cent, do you, sir?
A. I can't tell you.
Q. You are a salesman.
A. I can't tell you what percentage.

Mr. Story: That is all I have, your Honor.

Redirect Examination

By Mr. Fritz:

Q. Well, the fact is, Mr. Brechhill, isn't it, that in a lot of cases the salesman can't find out from the customer precisely what the competitor's bid is?
A. That's right.
Q. He gets an idea and he believes the customer and he acts accordingly, isn't that right?
A. Exactly true.

The Court: You are excused.

[fol. 652] Howard B. Schultz, Sworn

By Mr. Fritz:

Q. Will you state your full name and address?
A. Howard B. Schultz, 4601 Henry Hudson Parkway, Riverdale, New York.
Q. Mr. Schultz, you have been in the employ and you still are of the ADT Company, is that right?
A. Yes, sir.
Q. How long have you been with the company?
A. Going on 35 years.
Q. Where did you have your beginning with the company?
A. In Detroit, Michigan.
Q. Have you been engaged in your early years in the selling of the different types of services that are sold by the ADT Company?
A. I spend all my time selling our various services.
Q. Were you out in the field as a salesman for a number of years?
A. I was in Detroit, Michigan, the State of Michigan, Indiana, Kentucky and Toledo, Ohio, for six years.

Q. During what period?

A. I believe from 1929 to 1935.

Q. And just briefly will you tell the Court what is the [fol. 653] procedure that a salesman engages in when he seeks a customer, a prospective subscriber, to one of the company's services?

A. Well, I would call on a prospect and discuss his needs, try to secure his interest in protection, and if agreed, we'd survey the premises and determine the number and type of equipment that he would need and compute a price, and then try to secure the agreement.

Q. What would the computation of the price depend upon —I mean, what did it depend upon in these instances?

A. Well, it was the number of units and the different types, and then the price would be based on that quantity in relation to our MBR price list.

Q. When you use the term "unit", what do you refer to?

A. Well, in different types of service you have different categories of units: The waterflow switch, the control valve, and each transmitter.

The Court: Mr. Schultz, you are not trying to give me the impression that this is an exercise in mathematics in which anybody sufficiently skilled with the prices and the pieces of equipment could arrive at the price, are you?

The Witness: Well, firstly——

The Court: Are you trying to give me that impression? [fol. 654] The Witness. No.

The Court. What else enters into it besides the multiplication?

The Witness. You have to determine what equipment will be required.

The Court. Well, what else?

The Witness. And that's it.

The Court. You mean it makes no difference whatsoever what anybody else is offering to perform the same service for—none at all; is that your testimony?

The Witness. Yes, sir.

Q. Do you mean that, Mr. Schultz? The Court is asking you if I may be pardoned——

The Court. Oh, I don't think I need any answer. I will

allow the witness' answer to stand. If that is his testimony I will take it for what value it has. I think I am able to form my own opinion of the witness without the leading of his counsel.

Mr. Fritz. Well, I would like to put this question.

The Court. No, there is no need to impeach your own witness.

Mr. Fritz. I am not going to impeach him, sir.

The Court. No.

[fol. 655] Q. In those days of your selling, 1929 to 1935, were there types of service which you found were being offered to prospective subscribers to whom you sought to sell central station service?

A. During that period, the only competitive field that we had was from local alarms, auxiliary ID systems, or the continued use of watchmen's services. In the territory that I covered at that time there were no other central station companies.

Q. Now then, beginning in 1935, did you have a different assignment besides selling?

A. In 1935 I was assigned to——

Q. I gave you the wrong year. In 1936 you were assigned to Chicago, were you not? That is what I had in mind.

A. At the end of 1935 I was assigned to deficit offices. In the later part of 1936 I was sent to Chicago.

Q. What was your job in 1935?

A. We had some deficit offices where we operated central stations, and I was sent in to work on those stations and to close them out and call on our subscribers there and to substitute direct connected services for the central station service.

Q. Do you know how those deficit offices originated?

A. Well, those offices——

[fol. 656] Q. Do you have personal knowledge, or do you have it as a matter of history?

A. That's a matter of history. They are all in connection with the Western Union Telegraph offices.

Q. Which was the one-time owner of the ADT Company, is that correct?

A. That's correct.

Q. All right. Go ahead.

A. And those were down at Marion, Indiana, and Anderson, Indiana, Paducah, Kentucky and Macon, Georgia.

Q. And you made studies of those deficit offices, did you?

A. Yes, sir.

Q. As a result of those studies were the offices closed?

A. The offices were closed.

Q. How were the subscribers who had previously been served by those deficit offices thereafter served, if they were?

A. By direct connected service to the police and/or fire department.

Q. That, as a witness said this morning, is a direct connection from the subscriber's premises, to either the municipal police or municipal fire department, is that right?

A. That's right.

Q. And that is the way the subscriber of these deficit [fol. 657] cities were thereafter served, is the right?

A. That's right.

Q. Upon the completion of that assignment and in 1936 where did you go?

A. Then I went out to Chicago.

Q. Doing what?

A. Selling all services.

Q. Did you have any special area of operation?

A. I had a territory on the west side of Chicago. It was like Roosevelt Road——

Q. I wasn't talking about some area in Chicago, but you sold in Chicago and you also sold, did you not, in other areas?

A. Oh, I left Chicago and went to Savannah, Georgia, Winston-Salem, North Carolina; Richmond, Virginia; Canton, Springfield, Ohio; Syracuse, Utica and Albany, New York; Scranton and Allentown and Redick, Pennsylvania.

Q. During that sixteen-year period of your sales experience, what did you find as the fact with regard to other competitive services when you sought to sell central station protective service?

A. Well, it was still the same type of competition of local alarm systems and other direct connected services, auxiliary ID systems and proprietary systems.

[fol. 658] Q. And was this true in the area of subscribers who were living and doing business in the areas where ADT central station service was available?

A. Yes, it was.

Q. Now then, at a subsequent period did you come to the New York office?

A. I came to New York in 1945.

Q. In what capacity?

A. As the national account representative.

Q. National account representative?

A. Yes.

The Court. Am I to understand that all the testimony you have given up to now precedes 1945?

The Witness. Yes, sir.

Q. In 1945 you came to New York as a national account representative, is that correct?

A. That is right.

Q. Was that——

The Court. Excuse me. Is it your view, Mr. Fritz, that the complaint reaches back that far?

Mr. Fritz. No, it isn't sir.

The Court. Then why are you giving me all this testimony to which you have such strong objection when it was offered by the Government?

[fol. 659] Mr. Fritz. Only background material to show the experience of the witness for the basis of his conclusions. That is all.

The Court. Do you think I wouldn't realize that at once, that it was background material with respect to the qualifications of the witness?

It is quite obvious that that isn't the way it ordinarily would be read by a person who looked at the transcript. I understand now that all of this is clearly irrelevant except as the qualifications of the witness. It has nothing to do with the complaint.

You agree?

Mr. Fritz. Well, there are no allegations in the complaint on that subject.

The Court. Then we have spent about fifteen or twenty minutes finding out what an expert fellow this is in an area as to which he is going to give us no testimony.

Q. Mr. Schultz, you went to New York in 1945?

The Court. Is there any reason his testimony shouldn't be struck? He is not going to testify about anything that he has talked about.

Mr. Fritz. Do you want me to reserve that?

The Court. No, I would like to know why, and I will strike it right now and reduce the record.

[fol. 660] Mr. Fritz. Well, my only point in offering it was to simply show that in those days as at the present time there is an existing competitive situation between the various types of service and I did it notwithstanding the fact that there is no allegation in the complaint relating to that period.

The Court. On the statement of defendants' counsel, the whole testimony is struck as irrelevant.

Mr. Fritz. Exception.

The Court. You except? How is it relevant? You told me it wasn't covered by the complaint. Is it covered by the Answer?

Mr. Fritz. I have only given your Honor——

The Court. How is it covered?

Mr. Fritz. I have simply stated that I think it is important to show, notwithstanding there is no allegation in the complaint relative to these periods, as a fact that the situation at that time was as it is now——that all of these circumstances are competitive with one another and that has been true since the beginning of the industry.

The Court. If you want the complaint widened, I am sure the Government would be willing to consider the matter.

[fol. 661] Mr. Fritz. No, I do not wish that.

Q. Mr. Schultz, what is a national account?

A. A national account is a firm with multiple locations that we have set up where we call at their executive office

---

Q. Wait a minute. You say "We have set up". Who sets up what?

A. The company has several offices listed in our national accounts program.

Q. Yes. Now I ask you: What is a national account?

A. Well, it is a company with headquarters in the New York City that has locations throughout the country.

Q. What would be an illustration of that?

A. It would be the American Can Company, Continental Can Company, J. C. Penney Company, Bimbel-Sachs.

Q. And do you have charge of handling some of those national accounts?

A. Yes, I do.

Q. How are they handled? Would you tell us that?

A. In most cases the needs of protection is determined by their own headquarters, usually in the engineering section of their company.

Q. Where?

A. In New York

[fol. 662] All right.

A. Sometimes they communicate that to me, sometimes to their local management, at which time our representative in the field calls at the local plant or building, surveys the property, determines the protection required, and prepares a contract covering his recommendations, and he forwards that to me, and I, in turn, submit it to their New York headquarters office. I do that. It is passed around to their various departments like their insurance department, finance department, engineering department, legal department, and purchasing department.

Q. And where are all these departments that you just mentioned located?

A. At their headquarters' site, New York City.

Q. In the first instance, who makes the estimate for the price to be charged for any particular location of a multi-location company or national account, as you call it?

A. Our local representative.

The Court. Well, that doesn't help much——location, you mean, at the particular place where the installation is to be made?

The Witness. Yes, sir.

[fol. 663] Q. Now are the initial examinations of the subscribers' needs in a particular location of a national account examined and looked at by your local field representative?

A. Well, they make the examination.

Q. That is what I am asking you.

A. They make the examination, and they are the ones who recommend and send to me a written proposal.

Q. And they make the estimate, do they?

A. They make the estimate.

The Court. Well, if I understand correctly, and I am not sure I do, the local representative surveys the physical situation and makes an estimate which takes into account the physical requirements, including the service. But, of course, he does not inquire about the competitive situation. He does not purport to make a final contract. The matter is handled in New York between your representative and the representative of the multi-located company, each of you being aided by knowledge that you have of the physical premises at a particular place. Is that right?

The Witness. Not entirely.

The Court. What is wrong about it?

The Witness. The local representative sends me a contract with the price filled in.

[fol. 664] The Court. But he does not know anything about the competitive situation, does he?

The Witness. Yes, he does. He is on the scene locally.

The Court. Well, let us assume——did you take J. C. Penney as an example?

The Witness. Yes, sir.

The Court. Do you think he knows about what J. C. Penney is being offered by other companies than yours as a charge for the services and system and the like to be used?

The Witness. I believe he would know.

The Court. He would?

The Witness. Yes, sir. He would have a very good idea of it because it is happening in the city he is working in. He should know the approximate quotations that the competitors would be using in that area.

The Court. You might be right, and I am not trying to say you are not right. But I am just inquiring as to whether there would not be presumably competitors of yours in connection with that situation who did not have a purely local business but who might be seeking on a na-

tional basis, as you are seeking on a national basis, to do business with J. C. Penney.

[fol. 665] The Witness. Well, actually it works out that our local men do know very close to what the pricing situation is.

The Court. So they know about the prices being offered by national competitors of yours.

The Witness. Well——

The Court. Yes or no?

The Witness. No.

The Court. That is what I thought.

The Witness. No to this.

Q. Let me ask you this. What competitors do you know who try to get business of particular locations of the so-called national accounts? They are generally speaking local companies, are they not?

A. They are local companies.

The Court. You mean you have no national competition?

The Witness. No, sir.

The Court. You have none?

The Witness. Not in central station.

Q. Well, Mr. Shultz, what you mean is——

The Court. What he means is what he has said. He is your witness.

Q. There isn't another company like——

[fol. 666] The Court. He is your witness. Mr. Fritz, I will not allow you to directly or indirectly impeach him. The answer is as clear as it could be.

Mr. Fritz. I think possibly the witness did not understand what your Honor was asking him.

The Court. Maybe he didn't. I intended to proceed as I did proceed and I got the answer that I wanted to get: if he knew whether there was national competition.

Mr. Fritz. I will bow to your Honor's ruling, of course.

Q. Let me ask you that fact. In connection with national accounts and single locations of those national accounts, do you in fact have competition?

A. We do have.

Q. And does your competition secure business of those

local places of a national account as against ADT's efforts to get the business?

A. They certainly do.

Q. Do you know of some instances that show it?

A. Well, the J. C. Penney Company.

Q. That seems to be cropping up quite often. But tell us about it.

A. Well, they just recently opened a store in Heywood, California, and we tried to secure the sprinkler supervisory [fol. 667] service and the burglar alarm service and the interior fire alarm service. So we did finally secure the sprinkler supervisory service on the central station basis, and they bought the burglar alarm system from the Mosler Company.

Q. From whom?

A. Mosler.

The Court. You said they bought it?

The Witness. Yes.

The Court. What did they buy?

The Witness. They bought equipment and connections to the police department.

The Court. They bought what?

The Witness. Connections to the police department.

The Court. But they did not buy any service from Mosler, did they? Did they?

The Witness. I don't know whether——

The Court. Don't you know that Mosler does not sell that kind of service?

The Witness. No. I understand that Mosler does have a service agreement.

The Court: You are telling me that Mosler supplies the service?

The Witness. I understand they do, your Honor.

[fol. 668] The Court. You do know that?

The Witness. I don't know it for a fact.

The Court. Well, then don't say it, if you don't know. Maybe you had better stay within the range of what you have observed.

Q. Well, Mr. Shultz, your example does not mean very much unless you tell us, first, does ADT have service of one kind or another for other stores of J. C. Penney?

The Court. Why don't we stay with this J. C. Penney-Heywood situation? It is rather interesting.

Mr. Fritz. Yes, I intend to stay with it.

The Court. Let us follow it through. How about the other matter? How many different kinds of equipment or service were involved?

The Witness. There are three kinds.

The Court. And you got one?

The Witness. We got one. Mosler got one. The Edwards Company got one.

The Court. What does the Edwards Company sell or supply?

The Witness. They manufacture fire alarm equipment.

The Court. Do they supply any service?

The Witness. As far as I know, there was no service [fol. 669] agreement there.

Q. Does ADT have other locations that are serviced by it of J. C. Penney?

A. Oh, we must have many other locations.

The Court. What is that? I would like to get that.

The Witness. We have several other Penney locations where we do service.

The Court. Where you do service?

The Witness. Yes, sir.

Q. Where ADT does?

A. Yes.

The Court. How many?

The Witness. Well, I would estimate about 75.

Q. So that is in the category of national accounts so to speak, is that right?

A. Yes, sir.

Q. Now do you know of any other instances in which a so-called national account——

The Court. Just a moment, please. Let us not leave J. C. Penney for a moment. That rather interests me.

When you fix the price for a new installation, at a new J. C. Penney outlet, doesn't J. C. Penney point out to you the relationship between what you propose to

[fol. 670] charge the new outlet with what you charge an existing outlet?

The Witness. I don't believe I follow you.

The Court. Well, supposing there are now 75 J. C. Penney outlets that you service. Is that clear?

The Witness. That is clear.

The Court. And J. C. Penney is going to open a 76th store in Boston. I don't think they have any here. Maybe they have. Would the representative of J. C. Penney in the ordinary course refer to the price that you charged the 75 outlets?

The Witness. Well, each one——

Q. The question is: do they refer to the price charged in the others, Mr. Schultz?

A. I would say they do.

Q. Yes. And when they do refer——

The Court. Really, at the moment I would like to be allowed to continue.

Mr. Fritz. I beg your pardon, sir.

The Court. And who conducts the negotiations?

The Witness. At the Penney Company?

The Court. The 76th imaginary store in Boston.

The Witness. It would be conducted by their insurance department in New York City.

The Court. Who would be your representative?

[fol. 671] The Witness. The insurance manager.

The Court. Would it pass at all through a local man in Boston?

The Witness. Only to the extent that after New York ——J. C. Penney's decides that they want a certain installation at a certain store, then they notify the local manager what their intention is, and they ask for his concurrence because the expense is charged back to that local store.

The Court. Is that all they ask for, his concurrence?

The Witness. That is my understanding of it, sir.

The Court. So it is not exactly as you described it before with regard to a local situation, and the local representative first making the recommendation and the national office then acting upon it.

The Witness. Well, I am talking now specifically about the J. C. Penney operation.

The Court. All right. J. C. Penney is not the way you described the usual situation.

The Witness. The J. C. Penney operation is considerably different.

The Court. I see. But you thought J. C. Penney was [fol. 672] typical enough a few moments ago. Now how many cases of J. C. Penney are there as compared with non-J. C. Penney cases?

The Witness. I would say the J. C. Penney cases are in the minority.

The Court. Well, does that mean 30 per cent of national companies with multi-outlets act like J. C. Penney and 70 percent do not?

The Witness. I believe it would be closer to 10 per cent are like J. C. Penney. I think the reason for it is that most of the Penney locations are similar in operation and usually in size. There is a much greater similarity in their operation, from one unit to the other, than most other types of operation.

The Court. You may proceed, Mr. Fritz.

Q. His Honor asked you, Mr. Schultz, whether or not when you were bargaining, or your local representative was negotiating, for the 76th J. C. Penney store reference would be made to the prices in the other 75 stores, and you said that they would or they probably would, did you not?

A. Yes, sir.

Q. I want to ask you: if they do make such a reference to that, what happens in the ultimate disposition of the [fol. 673] contract with regard to price?

A. It wouldn't make any difference because——

Q. No. Tell us—— all right, it wouldn't make any difference. But what happens?

A. We price each job on its own without any relation to any other contracts with that customer.

The Court. You asked about the situation in the other 75 without any intention of using it? You mean it is just a delaying action, like a frivolous motion. It has no relation to anything. It is just idle. It is a waste of time. Is that right?

The Witness. I would not ask him about what they pay for the other 75 stores.

The Court. You think that comes into the conversation a little like, "What is the weather today?" It has nothing to do with what finally is decided?

The Witness. I don't follow you, sir.

The Court. Well, all right. I will take a recess and you can consider the weather for five minutes.

(Recess.)

[fol. 674] Q. M. Schultz, I show you a copy of a letter dated September 12, 1955, the original of which apparently bore the signature of L. J. O'Brien, General Manager of Sales Production. Did a copy of that letter come to your attention?

A. Yes, it did.

Q. Are you familiar with the contents?

A. Yes, sir.

Q. And is the manner in which the national accounts are handled in fact as you know it such as outlined in this letter?

A. That's exactly the same as that.

Mr. Fritz. I ask this be marked.

The Court. Is there any objection?

Mr. Story. I haven't seen it, your Honor. No objection, your Honor.

The Court. There being no objection it is admitted.

[Copy of letter, dated 9/12/55, from L. J. O'Brien, marked Exhibit I.]

Q. Mr. Schultz, do you know as a matter of personal knowledge of the number of instances in which, although ADT serves a number of locations of a so-called national account, other locations are served by other competitors?

A. Well, there are several locations. I know the Ameri-[fol. 675] can Can Company at Arlington, Texas; ADT has the sprinkler supervisory and waterflow alarm contracts and the Smith Detective Agency has the burglar alarm service.

There is a case out in Denver, Colorado, with the McKesson-Robbins Company. They have signed up with the Smith——

The Court. How many national accounts do you handle?

The Witness. About 250.

The Court. And am I correct in assuming that, with the exception of half a dozen or so of those 250 if you have one part you have all parts of their business which falls in the line of your business?

The Witness. Well, there are several more——

The Court. I beg your pardon?

The Witness. Well, there are several other instances.

The Court. Well, so far you have mentioned four or five. Out of the 250 accounts in 90 per cent of the cases do you have 100 per cent of the business?

The Witness. No, sir.

The Court. Well, in what percentage of the business have you 100 per cent of the business——80 per cent?

[fol. 676] The Witness. I don't think we have 100 per cent of any of them.

The Court. Well, by 100 per cent I mean without any competition from others in your line of business, obviously. Is there no case where you have 100 per cent?

The Witness. None that I know of, no, sir.

The Court. Are there a number of cases where you have 90 per cent of the business?

The Witness. Yes, I imagine that's right.

The Court. Well, are you able to break it down so I can have any kind of quantitative idea? You know, impressionism is very fine in the fine arts, but it is of little use in the law.

The Witness. I can't do it by memory, sir.

Q. Well, you can prepare such a schedule for me, can you not?

A. Yes, sir.

Q. Will you do it?

A. Yes, sir.

Mr. Fritz. And I'll submit it to the court.

Q. But while we are doing that, may I have a list of those companies that you know of now which you serve as national accounts and in which competitors serve some locations of those companies?

[fol. 677] The Court: Wouldn't it be easier——

Mr. Story. I object to that.

The Court. I shall sustain the objection for a reason that if there are 250 national accounts it can be presented graphically with 250 entries on one side, the number of locations shown at right angles, x's indicating the number of places where the service is rendered by the defendants.

Mr. Story. Your Honor, may I add just one other thing? My objection is to have this be confined to the cities where they furnish central station protection service.

The Court. It will appear readily from my suggested form.

Q. Well, in the national account area, Mr. Schultz, are there any companies that were national accounts of ADT that had central stations that left that category and took no other types of service?

A. Yes, there are several of them.

The Court. I haven't any doubt this is true. It is unimpressive except measured quantitatively.

Mr. Fritz. I am talking now, if your Honor please, about a change by very large organizations from central station to local alarm and to insurance as a different method of [fol. 678] protection.

The Court. I have no doubt it takes place. The question, however, is its frequency as shown in some adequate statistical manner.

I am not going to be impressed. I am just trying to help you by telling you I am not going to be impressed by these sporadic instances. I know all kinds of sporadic things take place in a large enterprise, an enterprise as large as this. I tried to make it clear that in Mr. Justice Holmes' phrase, I think quantitatively.

Mr. Fritz. Well, I understood, your Honor, of course. I think that there is some qualitative value to knowing that some large organizations look at local alarms as being better or equivalent to the type of service we are talking about in this market, and that is my only point.

The Court. Well, Mr. Fritz, maybe we are incapable of getting together on the point, but I do really feel rather strongly about this. I think that your attempt to have me look at this in a dramatic qualitative way by special epi-

sodes might be appropriate if you were addressing a jury or, indeed, if you were involved in the question of subjective intent under the antitrust laws.

[fol. 679] My notion may be mistaken, but it is certainly a very firm one——that the problems under the anti-trust law are generally statistical and quantitative. The Government dresses up its case as though there were something wicked by a defendant in an antitrust proceeding.

Mr. Fritz. I am sure of it.

The Court. But I am not much impressed by melodrama on that side nor am I much impressed on the other side by pictures of the innocent, ravished maiden. I don't really think that either one of these situations describes the economy in which we function.

The economy in which we function is a statistical picture, and it is very difficult indeed under the traditional notions of question and answer in a court room to keep in mind the economic nature of the inquiry.

It is not an accident that the view of McKenna, J., with respect to size might be viewed differently by Justice Cardozo, and that has now lapsed entirely into the limbo of the discarded notions ever since the Aluminum and other cases.

It is quite plain to anyone who is willing to look freely and without prejudice at the situation that the present [fol. 680] majority of the Supreme Court of the United States, whether wisely or not, regards itself as a governor of the economy in terms which are exactly parallel to those which would be used by a department of economics in estimating situations.

Now one may or may not be sympathetic with this, and I don't want you to suppose that merely because I am indulging in this gratuitous exposition, I am necessarily of the view that this is sound. Indeed, I think that the article I wrote about Mr. Justice Brandeis, which appeared in the Atlantic Monthly and was republished in their volume, The Atlantic Harvest, shows that I am not an unreserved admirer of the present doctrine with respect to the antitrust laws.

But it doesn't make any difference whether I am an admirer any more than it makes any difference whether your clients like it. We are both subject to the law of the land,

and the law of the land is what five judges say it is. And all that I have been trying to do in this proceeding is to stay within what I understand to be the now prevailing views, or those likely to be prevailing by the time this case gets to a higher court if it gets there.

[fol. 681] Mr. Fritz. Well, I put a question. I understand your Honor doesn't wish to take the answer?

The Court. Well, I just think it isn't helpful.

Mr. Fritz. Well, that being so, I will bow to your Honor's ruling. I respectfully disagree.

The Court. Well, go ahead, if you want it take it. I am not trying to exclude you from putting in anything that is within the scope of the complaint. I admit if it is before 1945 I am not very sympathetic.

Mr. Fritz. Well, this isn't before that time.

Q. I think I asked you a question as to whether there were two large chain stores that at one time had been receiving ADT central service station which had changed to some other type of electro-protective service, did I not? I asked you that question, did I not?

A. No, you did not.

Q. Well, I am asking it to you now. Is it so?

A. Yes, it is so.

Q. Which were they?

A. One was the Howard Clothes Company, a men's clothing store.

Q. Is that a chain store?

A. Chain store.

Q. Nationwide?

A. Nationwide.

[fol. 682] Q. What was the other one?

A. The other was Robert Hall Clothes.

Q. Same kind?

A. Same general type.

Q. What kind of service does ADT furnish in each instance?

A. We rendered central station burglar alarm service.

Q. And what happened and when did it happen?

A. About ten years ago the Robert Hall Company cancelled all of their burglar alarm service.

The Court. When did this complaint begin?

Mr. Fritz. The complaint begins—Well, that is a very

difficult question to answer. There are all kinds of dates in this complaint going back to 1907 so far as certain types of documents are concerned, but there was a cutoff period of 1951 for production purposes, and I think the last five years for other matters of interest.

The Court. How far should this go back when I make the really important findings, if I make them, Mr. Story?

Mr. Story. Well, your Honor—

The Court. That is easy. Now, what is the answer—— not "well, your Honor", quickly?

Mr. Story. Well, Judge Sweeney——

The Court. I didn't ask you about Judge Sweeney.

[fol. 683] Mr. Story. 1951

The Court. All right. That is ten years ago or later.

Q. All right, Mr. Schultz. You are within the law, so to speak. What did they do?

A. Robert Hall cancelled the central station burglar alarm service and I asked their expense controller who served the notice on us, a Mr. Schiller. He told me that they changed their insurance coverage to a different carrier and a different type policy, and that the new carrier only required iron bars on their windows.

Q. As far as you know has that been the situation?

A. Well, that was true for about five years, and they started to have some losses five years ago, and since that they have been installing local burglar alarm systems.

The Court. I realize that may be true because of neglect, but it may not be. This witness can't tell us.

Mr. Fritz. No, I don't think he has anything to say.

The Court. No, he is just trying to make me think as if he was testifying about cause and effect, or you are trying to make me think that.

Mr. Fritz. Well, that's a hope I have.

[fol. 684] The Court. I just wanted quickly to unburden you of that hope.

Mr. Fritz. Thank you, sir.

Q. Now, what happened in the other case of Howard Clothes, if you know? Is that within the last ten years?

A. No. Howard Clothes dates back about five years.

Q. That is within ten, isn't it? What happened?

A. They had central station burglar alarm service in approximately thirty locations, and they cancelled the central station service and converted their systems to local alarm systems.

The Court. If cause and effect were important——and I am not suggesting it is——the only persons who can testify with respect to their motivation are the people who engaged in the conduct, not some third party.

Mr. Fritz. The depositions from someone in each of those companies will be on file.

The Court. That's fine. That is interesting evidence, but this man's testimony is just of the same value as anybody else's who speculates on a third person's motives, like your speculation on my motive which hasn't proved to be entirely reliable.

Mr. Fritz. I think there has been room for error on both sides.

[fols. 685-686] Q. With respect to these two chain store groups, do you know how many stores were involved in each case, Howard Stores and Robert Hall?

A. In Howard I think there are approximately thirty, and Robert Hall it seems to me there are around fifty or sixty stores.

Mr. Fritz. That is all.

The Court. Any cross-examination?

Mr. Story. We have no questions, your Honor.

[Off the record]

[Adjourned at 3:35 p.m., until Wednesday, June 17, 1964, at 10 a.m.]

[fol. 687] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

C. A. No. 2785 (R.I.)

Wyzanski, D. J.

Transcript of trial—June 17, 1964

[fol. 688] The Court. Your next witness please for the defendants.

EDWARD GASTON, Sworn

Direct Examination.

By Mr. Williams:

Q. Would you state your full name and address, sir?

A. Edward Gaston, 173 Melrose Place, Ridgewood, New Jersey.

Q. By whom are you employed, sir?

A. The American District Telegraph Company.

Q. What is your job, sir?

A. I am manager of the Data Processing Center.

Q. How long have you been manager of that unit?

A. Approximately two years.

Q. Are you a certified public accountant, sir?

A. I am.

Q. Would you please tell us briefly what your duties are at the Data Processing Center?

A. To manage a department of approximately 22 people, to process oh, the bulk of the accounting records through IBM equipment, including the 1401 computer.

Q. Approximately how many data processing employees are under your supervision?

A. Approximately 22.

[fol. 689] Q. Are you familiar with the ADT Company Form 701?

A. I am.

Q. Approximately how many forms are there in the company records?

A. Approximately 33,000.

Q. Did you undertake a program, sir, to make an analysis of the information recorded on these Forms 701?

A. Yes.

Q. Would you describe to us what that program was?

A. The 701s were coded in such a fashion that we could punch the information from the 701 into punch cards.

Q. What was the information that was coded on the 701 and placed on what you call punch cards?

A. The year in which the 701 originated, the town at which it originated, the type of service that ADT offered.

Q. That is whether it was a central station system or some other type of system?

A. The type of system and service. The system was central station, local, direct connected, and the service was fire alarm, burglar alarm, sprinkler, and so forth, the competitor's name if there was a competitor involved, whether ADT won or lost the bid for the job, whether the [fol. 690] ADT bid was high, low or equal to the competitor's or whether we did not know how it compared with the competitors' bid, a control number so we could refer back to 701.

Q. Did you also include information as to the type of system and service the competitor was reported to have offered?

A. Yes.

Q. Are there a great number of these competition reports that do not have the name of the competitor on them?

A. Yes.

Q. Would you explain what type of reports those are and what information from those reports was placed on tabulating cards?

A. There were instances where the salesman did not encounter competition but encountered price resistance on the part of the subscriber. We may have won or lost the sale. But the salesman indicated there was price resistance on the part of the subscriber to the price he asked.

Q. You told us that the information was taken from the Form 701 and placed on a punch card?

A. Yes.

Q. After that was done was there some method of proof [fol. 691] or verification as to the correct transfer of information?

A. Yes. All these cards were proofread. The information punched in the card was intepreted across the top of the card.

Q. Is that done by visual printing?

A. Yes. This is done by machine that interprets the holes in the cards and prints the information across the top of the card.

Q. And then was the card so printed compared with the original Form 701?

A. Yes.

Q. In cases where errors in punching were found, were they corrected and new cards cut?

A. Yes.

Q. What was done in the case where the Form 701 indicated there was more than one competitive company involved?

A. Well, in that case we had to punch separate cards for each competitor.

Q. So if the ADT Company was reported as having been in competition against three companies on a particular job, three cards would have been prepared?

A. That is correct.

[fol. 692] Q. Each one bearing the name of the particular competitor that was listed?

A. Correct.

Q. And the type of service and system that the competitor was offering?

A. Correct.

Q. After all these cards were prepared did you have listings and tabulations made of them?

A. Yes.

Q. Could you tell us approximately how many instances of price resistance were reported based on the tabulation of these cards, based on the 701s?

A. Approximately 16,865 cases of price resistance.

Q. That is out of a total of how many instances, sir?

A. Oh, 33,458.

Q. In how many instances, sir, did the competition reports show that ADT offered central station service and its competitor offered central station service?

A. Approximately 10,481 cases.

Q. Of those cases, sir, how many are reported by these Forms 701 to have been secured by the ADT Company?

A. 7,915.

Q. How many are reported to have been secured by competitors?

A. 2,566.

[fol. 693] Q. Of the jobs secured by ADT, how many are reported to have been secured at a price higher than that of the competitor?

A. I will have to look up that. I am afraid I lost the trend of your question.

Q. The question was: Of the number of central station jobs secured by ADT in competition with a central station company, how many of those jobs secured were secured at a price reported to be higher than that of the competitor?

A. 3,753 of the jobs we secured were secured at a price higher than the competitor.

Mr. Story. Your Honor, the Government would like to object to this. I can't see how it is relevant or material in all of these in this case, and I hesitate to make objections, but it does seem to me that this is completely far afield.

The Court. I wouldn't worry about it. I am going to let it in.

Q. Of these jobs secured, Mr. Gaston, in competition with central station companies, in how many instances was it reported that ADT Company did not know what the competitor's bid was?

A. 3,915.

[fol. 694] Q. And in how many instances was the bid reported as even?

A. 120.

Q. And in how many instances was it reported as low?

A. 127.

Q. Similarly as to jobs in which at ADT competed with a central station company and lost, would you give us the total number of jobs lost?

A. The total are 2,566.

Q. And ADT was reported high on how many?

A. 1,486.

Q. Low on how many?

A. 30.

Q. Even on how many?

A. 17.

Q. And on those instances where the competitor's bid was unknown to ADT?

A. 1,033.

Q. Mr. Gaston, did your study of these competition reports include every competition report available in the company up to a certain date?

A. Yes.

Q. And what period of time did that encompass from the beginning to the end, approximately?

[fol. 695] A. We started competition reports in 1955.

Q. And——

A. And cut off at the close of business June 25, 1963.

Q. That was the last date on which you transferred information from Form 701s to punched cards?

A. Yes.

Q. The practice of preparing competition reports, however, within the company still continues?

A. Yes.

Q. Mr. Gaston, were these cards sorted in such a way as to be able to show the number of instances in which ADT offered central station service and an identifiable competitor offered some type of service other than central station?

A. Yes.

Q. What types of other services were listed in your coding program? I should say other systems.

A. Other systems other than central stations were direct connected, local, proprietary, auxiliary, telephone answering service, patrol, watchman supervised, watchman clock supervised, and we had a tenth category for miscellaneous or unknown systems.

Q. Have you had a tabulation made based on this set [fol. 696] of cars which would show the number of instances in which ADT offered central station service and a competitor offered some type of service other than central station?

A. Yes.

Q. How many such instances are shown by the tabulation?

A. ADT bid central station service——

Q. And competitors bid something other than central station.

A. ——3,678 instances.

Q. And these other services are the ones that you have just mentioned previously?

A. Yes.

Q. In how many of such instances did ADT lose the job to this group of competitors?

A. 1,095.

Q. That is 1,095 jobs lost out of 3678 solicitations?

A. Correct.

Q. Have you also had a tabulation prepared of the number of instances in which ADT offered central station service and a competitor offered a local alarm?

A. Yes.

Q. How many such instances are shown on the tabulation?

A. 1,287.

Q. And how many of those did ADT lose to competition?

[fol. 697] A. We lost 401.

Q. That is a loss of 401 out of 1287 solicitations between central station service and local alarm service?

A. Correct.

Q. Have you also prepared tabulations of jobs in which ADT offered central station service and specific named competitors offered some type of service other than central station?

A. Yes.

Q. Have you prepared such a tabulation for solicitations in competition with the Auto-Call Company?

A. Yes.

Q. Give you give us the number of solicitations and the number of jobs out of that won by ADT?

A. Total solicitations were 40. ADT won 25.

Q. Do you have similar information as to the Diebold Safe & Lock Company?

A. I do: Total solicitations were 183. ADT won 114.

Q. Do you have similar information with respect to the Gamewell Co.?

A. Yes. Total solicitations, 189; ADT, won 128.

Q. Do you have similar information with respect to the Minneapolis-Honeywell Company?

A. Yes. Total, 75; ADT won 53.

[fol. 698] Q. And with respect to the Mosler Safe Co.?

A. Total, 62; ADT won 46.

Q. And with respect to the Notifier Co.?

A. Total, 163; ADT won 136.

Q. And with respect to the Radar Eye Co.?

A. Total, 103; ADT won 76.

Q. And with respect to the Sperling Co.?

A. Total, 25; ADT won 12.

Q. These results that you have just stated to us with respect to these specific companies are instances in which ADT offered central station service and these specifically named companies offered some type of service or system other than central station; is that correct?

A. Correct.

Q. Looking at the tabulation or listing you have in front of you can you determine in general what types of systems these other companies were offering?

A. Direct connected, local, telephone answering service, proprietary.

Q. Do they also include auxiliary type services?

A. Auxiliary, watchman service.

[fol. 699] Q. Mr. Gaston, in connection with your duties as manager of the Data Processing Center, are you familiar with the procedures that are used by the ADT Company in recording revenue?

A. Yes.

Q. Are there tabulating cards maintained in the ordinary course of business which reflect information showing the annual service charge made to subscribers and its relation to the Minimum Basic Rate that would be applicable to that subscriber's installation?

A. Yes.

Q. Is a tabulation card prepared for each instance in which a sale of ADT service takes place?

A. Yes, sir.

Q. Have you had tabulations prepared based on this set of revenue cards which will indicate the number of sales which were made at Minimum Basic Rates, below Minimum Basic Rates or above Minimum Basic Rates for each city in the ADT system?

A. Yes.

Q. Is this tabulation broken down by years?

A. Yes.

Q. Is it also broken down into two groups of cities?

A. Yes, it is.

[fol. 700] Q. What are those two groups of cities?

A. Central station cities and non-central stations cities.

Q. By that do you mean cities in which ADT has a competing central station and cities in which ADT does not have a competing central station?

A. That is correct, yes.

Q. Take in the year 1957 for the cities in which ADT has a competing central station located therein, how many sales were made at Minimum Basic Rates?

A. 5,457 at Minimum Basic Rates.

Q. How many were made at below Minimum Basic Rates?

A. 3,748.

Q. How many were made at above Minimum Basic Rates?

A. 1,572.

Q. And the total sales?

A. 10,777.

Q. We are talking here, when we say sales, you are using the term to mean instances of selling and not any dollar amount?

A. That is correct.

Q. Similarly for 1957, for the group of cities wherein there is not located somebody else's central station how many jobs were sold at MBR?

A. 3,120.

[fol. 701] Q. How many were sold at below Minimum Basic Rates?

A. 1,359.

Q. How many were sold at above Minimum Basic Rates?

A. 846.

Q. Similarly for the year 1958, for cities wherein there is located somebody else's central station in addition to ADT's, how many instances of selling were there at Minimum Basic Rates?

A. 6,343.

Q. And below Minimum Basic Rates?

A. 4,718.

Q. And above Minimum Basic Rates?

A. 2,124.

Q. Similarly for 1958, for the cities wherein there is no competing central station located, how many jobs were sold at Minimum Basic Rates?

A. 3,705.

Q. And below Minimum Basic Rates?

A. 1,516.

Q. Would that be 1,566?

A. Yes, that is correct, it should be 1,566.

Q. How many jobs were sold at above Minimum Basic Rates?

A. 1,196.

Q. Similarly in 1959, for cities in which there is a [fol. 702] competing central station, how many jobs were sold at Minimum Basic Rates?

A. 6,007.

Q. And the low Minimum Basic Rates?

A. 5,208.

Q. And above Minimum Basic Rates?

A. 3,292.

Q. For 1959, for the cities where there is no competing central station, how many were sold at Minimum Basic Rates?

A. 3,857.

Q. And below Minimum Basic Rates?

A. 2,099.

Q. And over Minimum Basic Rates?

A. 2,320.

Q. For 1960, the cities in which there is a competing central station located, how many jobs or instances of selling were there at MBR?

A. 6,009.

Q. And below MBR?

A. 7,293.

Q. And above MBR?

A. 2,802.

Q. For the same year, for the remaining group of cities, how many were sold at MBR?

[fol. 703] A. 4,340.

Q. And below MBR?

A. 2,635.

Q. And over MBR?

A. 1,978.

Q. For 1961, the cities where there is a competing central station located, how many jobs were sold at Minimum Basic Rates?

A. 5,980.

Q. And below Minimum Basic Rates?

A. 8,100.

Q. And over Minimum Basic Rates?

A. 2,703.

Q. For the remaining group of cities for that year, how many were sold at MBR?

A. 4,638.

Q. And those sold below MBR?

A. 2,606.

Q. And those sold at over MBR?

A. 2,396.

Q. Similarly for the year 1962, for the cities in which there is a competing central station, what was the breakdown of the three categories of sales?

A. Equal to MBR 6,730, under MBR, 8,337, over MBR, [fol. 704] 3,582.

Q. For the remaining group of cities in which there is no competing central station?

A. Equal to MBR 4,972, under MBR, 2,861, over MBR, 2,700.

Q. And the last year for which you have figures is 1963?

A. Yes.

Q. For the cities in which there is somebody else's central station located, what is the breakdown as to that?

A. Equal to MBR 6,705, under MBR 8,640, over MBR 4,042.

Q. Finally, with respect to the remaining group of cities for the year 1963, what are the figures?

A. Equal to MBR 5,162, under MBR 3,161, over MBR 3,020.

Q. From what records are the tabulating cards on which these figures you have testified about based?

A. We punched them from a contract authorization which is prepared from the contract files.

Q. Is the information on that taken from the contract data Form 400 which is prepared by the salesman?

A. Yes.

Q. Has ADT used machine accounting methods in its central station operations for some period of time?

A. Yes.

Q. Approximately how long?

[fol. 705] A. Forty years.

Q. In the course of that usage has ADT assigned specific numbers to towns in which it operates?

A. Yes.

Q. And are these numbers used in revenue accounting and for other purposes?

A. Yes, they are.

Q. And have the same numbers been used to identify towns on the competition studies you have prepared?

A. Yes.

Mr. Williams. If your Honor please, I have a number of tabulated exhibits which have previously been numbered by the Clerk, and I would like to offer them into evidence at this time.

The Court. Is there any objection?

Mr. Story. Yes, your Honor. I would like to object, first of all, to this witness' testimony.

The Court. Well, no. The question is the admission of the exhibits.

Mr. Story. I haven't read them, your Honor. I am in no position to ——

The Court. May I make a suggestion here. I suggest you do not object. My view of this testimony is that it is highly immaterial and most irrelevant. It is not going to [fol. 706] affect me in the slightest. It is one of these things that I am allowing in. It is the equivalent of an offer of proof. I don't think for a moment the Supreme Court of the United States is going to pay the slightest attention to all of this, but the defendants are entitled to find it out and not to believe me.

Mr. Story. Under those circumstances, your Honor, and referring to your Honor's statement of the first day, the Government does not have any objection.

The Court. Admitted in toto. I am going to allow the defendants to put in the kitchen sink. Some day some defendants' lawyers will be told by some Supreme Court Jus-

tice as plainly as possible that we are no longer interested in methods of defendants' counsel trying to induce judges to amend the antitrust laws and to take from the full intent of Congress the full impact of the statute because the judge happens to have an economic sympathy or to have some kind of other reason for wishing that the antitrust laws were not written as they have been written.

Mr. Williams. No further questions.

Mr. Story. Your Honor, just for the record, I would like to at this time move to strike the entire testimony [fol. 707] of this witness in connection with the 701 procedures. His testimony of the 701 calculations should be stricken because they are completely irrelevant and immaterial.

The Court. The motion is denied.

Mr. Story. The Government has no questions.

GEORGE SIMON, Sworn

Direct Examination.

By Mr. Fritz, Jr.

Q. Will you please state your name and home address, sir?

A. George Simon, 573 North 12 New Hyde Park, Long Island.

Q. Are you an employee of the defendant ADT Company?

A. I am.

Q. In what capacity are you employed?

A. Secretary.

Q. For how long have you held that position?

A. Three years.

Q. Prior to this position, what position did you occupy?

A. Assistant Secretary, Assistant Treasurer.

Q. As Secretary of ADT do you have responsibility for and supervision over the files of the company having to do with subscriber contracts?

A. Yes, I do.

Q. Are you familiar with the Forms 400 which are known [fol. 708] as Contract Data Reports used by ADT?

A. I am.

Q. Are such forms prepared in connection with each service contract taken by ADT?

A. They are.

Q. Are such forms prepared with respect to contracts for local alarm service as well as for central station service?

A. For both services.

Q. These forms are retained in the files of ADT, each file having to do with each existing subscriber of ADT?

A. Yes.

Q. These contract data forms call for a statement of the valuation of the contents of the premises protected by the alarm service?

A. For the value of the contents, where known, the value of the property.

Q. These forms are required to be submitted by each sales representative when they secure a contract?

A. That is correct.

Q. With new and renewal contracts?

A. Yes.

Q. Do these forms call for a statement by the sales representative as to the nature of the business or vocational [fol. 709] description or classification of the subscriber?

A. Yes.

Q. Did you at the request of my law firm make an examination of all Forms 400 in the files of the company relating to ADT's local alarm accounts?

A. Not all but in five cities.

Q. In which cities?

A. Chicago, Detroit, Grand Rapids, New Orleans and Youngstown, Ohio.

Q. Mr. Simon, can you state whether or not ADT maintains a central station in each of those cities?

A. ADT maintains a central station in each of those cities.

Q. Is there an approved central station in any of those cities other than the ADT central station?

A. In two cities, Chicago and Detroit.

Q. Was this examination made, this examination of Forms 400 made by persons working under your supervision?

A. That is correct.

Q. Was this information obtained by that examination reduced to summary statement form?

A. It was.

[fol. 710] Q. What information was set forth in that statement?

A. The name of the subscriber, the city, the type of system, whether it is burglar alarm or fire alarm, the vocational description, the property valuation and the contents' valuation, with supplemental remarks pertaining to certain factors that were important to the analysis being made.

Q. Do these forms indicate whether these accounts, which are local alarm accounts, previously subscribed to central station service?

A. Where the contract data information reflected it, it is recorded.

[fol. 711] Q. Such data related to the immediately preceding contract of that subscriber with the company?

A. That is correct.

Q. This statement relates purely to local alarm accounts, does it not?

A. Yes, it does.

Mr. Fritz, Jr. Your Honor, may I offer this summary statement into evidence?

The Court. You may.

Mr. Fritz, Jr. I also ask leave, sir, to substitute a reproduction of that at a later date.

The Court. Is there objection?

Mr. Story. I make the same objection based on the statement I made for the introduction of the document prior to this. Which number was what?

The Court. The last exhibit.

The Clerk. The last exhibit number of the defendants was I. J is the next.

The Court. On the same ground that you object to I you now object to J?

Mr. Story. Yes, your Honor.

The Court. And I make the same ruling. Admitted.

[Summary statement marked Exhibit J.]

[fol. 712] Mr. Fritz, Jr. Thank you. That is all.

Mr. Story. I have no questions, your Honor, but I would like for the record to make a motion to strike the entire testimony of this witness because it is completely irrelevant and immaterial to the issues of this case.

The Court. I grant it. I think it is quite obvious that I am merely making a more, I hope, satisfactory technical basis for appellate consideration than would be involved in a mere offer of evidence and a rejection of the offer of evidence. I think that this is a clearer way of letting the Supreme Court see what a proffer of evidence would be because I am admitting the evidence but I myself think it has no possible bearing on present doctrine in the Supreme Court of the United States.

Mr. Fritz, Jr. Sir, may I point out the respect in which these defendants believe this document is relevant?

The Court. Surely.

Mr. Fritz, Jr. There has been certain testimony given in the course of depositions which have been put in evidence, and the Government has contended that local alarm [fol. 713] users are almost exclusively establishments with very low inventory values or, as the Government at one point stated, the "Ma and Pa corner soda pop store", or something to that effect. This is intended to bear on that contention.

The Court. If it comforts you at all, I think that the United States also has introduced a host of irrelevant material. Some day someone is going to learn that these lengthy antitrust cases are nothing but a reflection of the inability or unwillingness of counsel on each side to read accurately the opinions in the Supreme Court in the last five years.

An antitrust case properly prepared can generally be presented in as brief a period of time as an automobile accident case——believe it or not——and the day will come when you will all see a resolute judge of the Supreme Court of the United States say exactly what I have said. Someone will have the courage.

Mr. Fritz, Jr. May I call the next witness, please?

[fol. 714] WILLIAM ARTHUR CRICHTON, Sworn

By Mr. Fritz, Jr.:

Q. Will you please state your full name and address for the record?

A. William Arthur Crichton.

Q. Are you in the employ of the defendant ADT?

A. I am.

Q. In what capacity are you employed?

A. Salesman.

Q. Where do you act as salesman?

A. Detroit.

Q. For how long have you been a salesman in Detroit for ADT?

A. Since 1946.

Q. Prior to that time how were you occupied?

A. I was with the Reliance Alarm Company.

Q. In Detroit?

A. In Detroit.

Q. Was that company engaged in the Electric Protection business?

A. It was.

Q. Are you engaged in the sale of alarm service?

A. I am.

Q. What types of alarm services do you sell?

A. Local burglar alarms.

[fol. 715] Q. Do you sell central station service as well?

A. On very few occasions.

Q. Mr. Crichton, are you familiar with the number of local alarm accounts to ADT service in the City of Detroit?

A. Local alarms, 1200.

Q. That is an approximation?

A. Yes.

Q. Are these primarily local burglar alarms?

A. They are.

Q. Are you familiar with the number of central station burglar alarm accounts to ADT service in the City of Detroit?

A. Approximately 1400.

Q. Are these local alarm subscribers situated within the service area of the Detroit central station?

A. Some of them, yes.

Q. Do you know how many are?

A. Approximately 85 per cent.

Q. Mr. Crichton, when you approach a prospect or solicit for alarm service, do you offer to your prospect both central station service and local alarm service?

A. On some occasions, yes.

Q. To what type establishment do you sell local alarm service?

A. Shops, furriers, supermarkets, drug stores, whole-
[fol. 716] sale houses, wholesale tobacco, appliance stores.

Q. Do you sell to any industrial plants or factories?

A. Yes.

Q. You have in fact sold to this variety of establishments?

A. Pardon, sir?

Q. You have sold local alarm services to these various categories of business establishments?

A. Yes, I have.

Q. Have you sold central station service to similar types of establishments?

A. I have.

Q. When you approach a prospect, do you make an evaluation of his premises with a view to determining the nature of his protection problem?

A. I do.

Q. What do you do?

A. Survey the premises for doors, windows, things that should be protected.

Q. Do you take note of the location of these premises?

A. I do.

Q. What do you note? Are you concerned with the nature of the area, the crime rate?

A. The nature of the area, the crime record.

[fol. 717] Q. Are you concerned also with the nature of the inventory?

A. Yes.

Q. Or the contents?

A. Yes.

Q. Do you discuss it with the subscribers?

A. Yes.

Q. Upon securing a contract for local alarm service, are

you required to submit a form 400 contract data report?

A. I am.

Q. Do you state on that report a valuation for the content of the protected premises?

A. Yes.

Q. How do you know what the valuation of the contents is?

A. By judgment and by asking the potential subscriber.

The Court. I can't hear you. I am sorry.

The Witness. By asking the subscriber.

Q. Was that your complete statement?

A. By my own judgment and by asking the subscriber.

Q. This is your judgment based upon your past years of selling?

A. Yes.

Q. Can you state, based upon your experience in selling local alarm as well as central station service, whether you have sold and are selling local alarm service to establishments which have the same basic protection problems, the [fol. 718] same inventory values, substantially the same as those establishments to which you have sold central station service?

A. Yes.

Q. Sir, are you familiar with the insurance aspect of the protective business, and by this I ask you to state whether you know what insurance premimum discounts are accorded by insurance companies to users of your alarm services?

A. Yes, according to the Underwriters Manual, a local alarm is rated as 20 per cent discount.

Q. A local alarm receives a 20 per cent discount?

A. Right.

Q. Are you familiar with the discount afforded for central station burglar alarm protection?

A. Yes——30 per cent.

Q. 30 per cent?

A. 30 per cent.

Q. For what type of central station burglar alarm service?

A. What we would call a 3-B certification.

Q. A WB certification?

A. A 3-B certification.

Q. Is this a type of central station service rendered to an establishment for which the central station does not [fol. 719] possess keys?

A. That's right.

Q. Do you encounter any competition in the City of Detroit from any approved central station companies?

A. Yes.

Q. Would you state the company?

A. There is Michigan Alarm, Automatic Alarm, Guardian Alarm, Dawn Patrol, Ace Alarm.

Q. Are each of these approved central station companies?

A. No.

Q. Are any of these?

A. Michigan Alarm is.

Q. Do any of the others that you have just mentioned provide central station service unapproved or otherwise?

A. They do.

Q. What form?

A. Central station service, circuit burglar alarms—— that would be Guardian Alarm, Automatic Alarm, Dawn Patrol.

Q. Do those companies furnish also local alarm service?

A. They do.

Q. You stated before that you have sold local alarm systems to the type of establishment to which you have sold central station accounts. Can you give me specific illus- [fol. 720] trations?

A. Yes.

Q. I have trouble hearing you, sir.

A. Rowe's Jewelry.

Q. Rowe's Jewelry?

A. Yes.

Q. Is that a store in Detroit?

A. It is.

Q. Is there more than one store?

A. Yes.

Q. How many?

A. Approximately ten.

Q. Have you sold service to them?

A. Yes.

Q. What form?

A. Local burglar alarm.

Q. Based on your experience selling in Detroit, are you able to state whether there are other jewelry stores similar in size, location and similar in respect to their protection problems to the Rowe's Stores?

A. Meyer Jewelry Co.

Q. What form of protection does Meyer's use?

A. They have central station.

[fol. 721] Q. From ADT?

A. From ADT.

Q. Is Meyer's Jewelry store similarly located to any of the Rowe stores?

A. Yes, it is.

Q. Where is it located?

A. Directly across the street.

Q. Are these establishments basically the same in size?

A. Yes.

Q. Have you been in both?

A. Yes.

Q. Are their inventories basically the same in your judgment from what you have seen?

A. To my judgment, yes.

Q. Have you had some more experiences with department stores or clothing stores?

A. Yes.

Q. Would you describe them?

A. Winkleman Bros. Apparel.

Q. What sort of store is that?

A. That is a ladies' apparel.

Q. How many stores are there?

A. Approximately twenty in Detroit.

Q. What form of alarm service do they use?

[fol. 722] A. Local alarms.

Q. Are they all within the range of central station service?

A. Yes.

Q. Are there similar stores, stores similar in your judgment, based on your experience over the years in selling these services, which are using some other form of service?

A. Yes.

Q. Would you tell me then?

A. Jacobson's.

Q. Are there others?

A. Fisher's Apparel.

Q. Do you sell alarm service in the environs or suburbs of Detroit?

A. I do.

Q. Do you there encounter your competitors bidding for the same prospects?

A. Do I which?

Q. Encounter your competitors seeking to service the same prospects?

A. Yes, I do.

[fol. 723] Q. What form of service have these competitors offered in opposition to your office?

A. Direct connects and local.

Q. Direct connects are permitted in the suburbs?

A. They are.

Q. You mentioned earlier that you sold local alarm service to warehouses or distributors?

A. Yes.

Q. Can you state who they are? Could you give me an example please?

A. Tobacco warehouses. I can't recall the names.

Q. Tobacco warehouses?

A. Yes.

Q. You have sold local alarm service to them?

A. I have.

Q. Have you sold central station service to them?

A. Yes.

Q. Are they similarly located?

A. Yes.

Q. Are they similarly located?

A. Yes.

Q. Do you have a judgment as to the value of their inventories?

A. A hundred thousand dollars.

Q. So with respect to the warehouses, using local as well as those using central station——?

[fol. 724] A. Yes.

Q. ——in your judgment these establishments are similarly situated insofar as the protection business or risks involved are concerned?

A. Yes.

Q. Have you sold to auto parts establishments?

A. Yes.

Q. Have you sold local alarm service?

A. Yes.

Q. Do you know the names of any?

A. M & M Auto Parts.

Q. Where are they located?

A. Michigan Avenue, Detroit.

Q. Have you been on the premises?

A. Yes.

Q. Have you formed a judgment as to the value of the inventory there?

A. Yes.

Q. What is it?

A. One hundred thousand dollars.

Q. Have you sold central station service to similar establishments?

A. Yes.

Q. Having what inventories?

[fol. 725] A. $100,000 to $125,000.

Q. Mr. Crichton, have you in selling local alarm service encountered Michigan Still as a competitor?

A. Yes.

Q. Have they offered approved central station service in opposition to your local alarm service?

A. Yes.

Q. Do you recall any instances?

A. Not offhand, no.

Q. Can you recollect and honestly state whether or not you have won or lost a local alarm subscriber to whom Michigan Still offered approved central station service?

A. Yes.

Q. You are unable to recall the precise instances?

A. I can't recall them.

Q. You are of the opinion, are you not, that functionally central station service is superior to local alarm?

A. Yes.

Q. Do you have an opinion to the effect that local alarm service is effective in preventing losses by burglary?

A. Yes.

Q. In what respect do they perform this function?

A. Assuming an attempt is made on the premises, the [fol. 726] alarm sounds and the intruder usually takes off immediately by the noise created.

Q. You stated that you do feel that central station service is superior?

A. Yes.

Q. Is it your opinion that you have sold and are selling local alarm service to establishments which in your opinion are prospects for central station service?

A. Yes.

Q. Are you saying that these establishments are using local, although in your opinion they should be using central station service?

A. Yes.

Q. Have you sought to convert them to central station service?

A. Yes.

Q. How many of the 1200 accounts, stated in terms of percentage, how many of the 1200 local alarm accounts with which you are familiar in the City of Detroit are in your opinion prospects for central station burglar alarm service?

A. I would say 50 per cent.

Q. This is based upon your view of their premises and [fol. 727] knowledge of their inventories?

A. Right.

Q. Now with respect to pricing, Mr. Crichton, when you are out selling central station service or other forms of service and you encounter competition, what policy are you obliged to follow if there be such a policy set by the company?

A. In what respect?

Q. In a competitive situation, what do you do by way of submitting a bid to a subscriber?

A. Our price is based on the number of doors and windows that have to be wired.

Q. In the event a prospect informs you of a bid or a quotation submitted by a competitor, do you still follow your standard unit price?

A. Not always.

Q. What do you do and what are you authorized to do?

A. Cut the price a little bit.

Q. By cutting the price a little bit, do you mean that you undercut by a little bit the price of the competitor?

A. No, not the price of the competitor, the price of the installation.

Q. When you say you cut a little bit, do you mean you meet the competitor's price?

[fol. 728] A. Not always, no.

Mr. Fritz, Jr. Thank you, sir.

Mr. Morrison. The Government has no questions.

The Court. You are excused.

Mr. Fritz, Jr. Mr. Sherer, please.

PAUL C. SHERER, Sworn

Direct examination.

By Mr. Fritz, Jr.:

Q. Mr. Sherer, would you please state your full name and home address?

A. Paul C. Sherer.

The Court. Would you spell the last name? I don't think I got it.

The Witness. S-h-e-r-e-r. Paul C. Sherer.

The Court. Thank you. Your address please.

The Witness. 5527 Fairway Road, Swanee Mission, Kansas.

Q. Mr. Sherer, will you please speak up loud and clear? I have trouble hearing you. Mr. Sherer, are you in the employ of any of the defendant companies here? They are ADT, Holmes——are you familiar with the defendants?

A. Yes.

Q. Are you an employee of them?

[fol. 729] A. No, sir.

Q. Were you formerly with the——in the employ of ADT?

A. Yes.

Q. In what capacity?

A. Special agent, sales department.

Q. Where were you so employed?

A. Kansas City, Missouri.

Q. What are the duties of a special agent?
A. To supervise the operation of the sale office.
Q. Did you engage in sales work?
A. I did.
Q. Are you retired now?
A. Yes, sir.
Q. For how long did you work with ADT?
A. 45 years.
Q. For how long did you work in the Kansas City area prior to your retirement?
A. Oh, approximately 38 years.
Q. All that time was spent in sales?
A. Yes, sir.
Q. Do you know Clarence Damon?
A. Yes, sir.
Q. When did you first meet him?
A. When he first went to work for our company.
[fol. 730] Q. Do you recall when that was?
A. I think it was 1942 or thereabouts.
Q. In what capacity was he employed?
A. In the construction department.
Q. Did he work with you in Kansas City?
A. Yes and no. At times we would run across him on installations that he was making.
Q. Did he continue to work in Kansas City down through the time of your retirement?
A. No, sir. In 1944 or thereabouts he was transferred to Wichita, Kansas.
Q. Was Wichita, Kansas in your sales territory?
A. Yes, sir.
Q. Did you have occasion to see Clarence Damon while he was at Wichita?
A. Yes.
Q. Did you have occasion to pass the time of day with him and become acquainted with him?
A. Yes, sir.
Q. Where you friendly with him?
A. Being with the company, yes.
Q. Did you lunch with him?
A. Occasionally.
Q. Did there come a time when he left the employ of the
[fol. 731] ADT?

A. That is right.

Q. When was that?

A. I think it was 1944.

Q. Did you thereafter at any time lunch with Mr. Damon?

A. Once.

Q. Where was that?

A. In Kansas City.

Q. Do you recall when it was?

A. Oh, approximately in 1952, around about in there, maybe a little later.

Q. Do you know what Clarence Damon was doing at that time? He was no longer in the employ of the ADT, is that right?

A. That is right.

Q. What did he do after his withdrawal from the ADT?

A. He returned to Kansas City and established his company.

Q. What kind of company?

A. Local alarm.

Q. Known as Damon Alarm?

A. Known as Damon Alarm.

Q. We are back at 1952 or so at the luncheon meeting. You had one luncheon meeting with him since his retirement?

[fol. 732] A. That is correct.

Q. How did it come about that you had lunch with Clarence Damon?

A. Well, we were checking up on our competition. I knew Damon from years back and I asked him to have lunch with me.

Q. You say you were checking up on your competition. Will you tell me this. Did you have a practice of preparing a statement every month or so listing your prospects for the hoped for accounts in the coming month or two?

A. Each month we had to prepare a Prospect Report and then through the District Office to the District Sales Manager—we were obligated to tell him on his visits to Kansas City what happened to this job. Did we get this one? Did we lose that one?

Q. Your District Sales Manager was located in Kansas City?

A. In St. Louis, yes.

Q. You were called upon to explain to him how it was that you had not secured certain prospects?

A. He would check our prospect list.

Q. Yes.

A. And if we did not get the job, he would ask us why.

[fol. 733] Q. Had you lost accounts?

A. Yes, sir.

Q. You had lost prospects?

A. Well, prospects, yes.

Q. You were selling central station service and attempting to?

A. Yes, sir.

Q. You had lost accounts to Damon?

A. To locals.

Q. He provided local?

A. Yes.

Q. You had sought to provide central station service?

A. That is right.

Q. Did this have to do with your going to see Damon?

A. Well, that, and the fact that we had lost some jobs, and I was trying to find out what was going on more or less.

Q. Well, what did you do? Did you call him?

A. I did.

Q. And you invited him to lunch?

A. That is correct.

Q. You spoke to him on the phone?

A. I spoke to him on the phone.

Q. What did he say?

[fol. 734] A. Well, he asked why I wanted to have lunch with him, and I told him. I said, "I would like to talk about business in general." And he said, "What does the ADT want to do—buy me out?" And laughed. I said, "Well, I have no authority to even talk about that."

Q. Did this all occur in the telephone conversation?

A. On the telephone.

Q. I am sorry if I interrupted.

A. He said, "Well, I'm busy." He said, "Would you like to come out to Brian's Barbecue?" This is a place out in the area there where they serve barbecue to a lot of businessmen. So I said, "Fine." I met him out there.

Q. How long did you spend with him there?

A. Oh, approximately an hour maybe, maybe an hour and ten minutes. I can't recall exactly the time, but I would say it was in that category.

Q. Do you recall in detail what the conversation was?

A. About contracts.

Q. No. Do you recall in detail—do you recall all the details of your conversation with him?

A. Not all of them.

Q. You do recall generally the nature of the conversation?

[fol. 735] A. Yes.

Q. You and he were on first-name terms?

A. Oh, yes.

Q. Would you state generally, or state to the best of your ability, what was discussed during the hour or hour and ten minutes you spent with Mr. Damon?

A. Well, we talked about the situation at ADT. He was familiar with ADT because, as I say, he worked for us. Then we talked about the competition that he was having at that time with the Mosley Alarm Company. Those two was fighting each other on locals. He was discussing Mosley a good part of the time.

Q. Was there any other discussion?

A. Well, he made the remark again, like he did on the phone conversation, he wanted to know if ADT wanted to buy him out.

Q. Did you make—I'm sorry.

A. And I said—I told him, I said, "Clarence, you know I have no authority to make a statement like that." And I said, "I wouldn't dare make a statement like that." I said, "Anything like that would come out of our executive office." He said, "Well, I know that but I was kidding."

Q. Were there further discussions?

[fol. 736] A. Only the fact that he said that inasmuch as he had made installations for the ADT when he was employed by the ADT that he could put in the same type of alarm as he put in for ADT, and he knew what the ADT requirements were as far as certification to underwriters, and he says, "I can do the same thing," and he says, "I can do it a darn sight cheaper, I know, than ADT can."

Q. Did you have any comment to make on that?

A. I made a comment to the effect—I said, "Yes. I noticed you have put in some alarms for $10 a month."

Q. Tell me: what did you want to find out when you went to see Mr. Damon?

A. Well, I wanted to find out on certain installations around there why we were losing them.

Q. ADT had lost accounts to him?

A. Oh, yes.

Q. And you wanted to know from him why?

A. I was trying to find out if he had been out soliciting our accounts.

Q. Had he been?

A. Well, to the best of my knowledge I feel he did.

Q. Did you discuss prices apart from what you have talked about here before?

A. I didn't hear that question.

[fol. 737] Q. Did you discuss prices or pricing apart from what you discussed or mentioned here earlier in your testimony?

A. No, only he made the remark, he said, "I know I can put in alarms cheaper than ADT," and he said, "You fellows have to go according to the book." In other words, he meant the Minimum Basic Rate sheet. He knew that. He was familiar with it.

Q. You mentioned that you were interested in finding out whether he had been soliciting your accounts. Why would you talk to him about that? You had known from your subscribers that you had lost them.

A. I found out through cancellations that he had been.

Q. Did you go there—did you talk with him or say anything to him, or threaten him with respect to solicitation of accounts?

A. No, sir, I had no authority to do that.

Q. I am not asking about authority. I am asking: did you do it?

A. No, sir.

Q. Did you complain about the fact that you had lost accounts to him?

A. Yes. I told him that I thought that we was losing accounts, and I felt that he was soliciting our accounts, [fol. 738] which of course he denied.

Q. Look, Mr. Sherer——

Mr. Fritz, Jr. I will withdraw that.

Q. Did you state to Mr. Sherer that ADT can put in alarms for $10 a month?

A. Did you say: did I state to Mr. Sherer? You mean Mr. Damon?

Q. Excuse me. Did you state that ADT could put alarms in for $10 a month?

A. No, sir, I had no authority to make a statement like that.

Q. Did you state that ADT could afford to lose money in Kansas City for many years, that it would not make any difference to the company, that it had profitable operations elsewhere, or did you state anything to that effect?

A. No, sir. I had nothing to say. I had no authority whatever to make a statement like that.

Q. I am asking you really what you did. I am not concerned about your authority.

A. I did not make that statement, no, sir.

Q. Did you suggest to him that he should raise his prices?

A. He suggested to me that he could raise his prices [fol. 739] and still beat the ADT price.

Q. Did you tell him that he should raise his prices?

A. No, sir. He told me he could.

Q. Did you discuss with him the manner in which he computed his charges and contrast it with the way ADT computed its charges?

A. No. He told me—he said that he knew how ADT figured the rates. And I told him, I said, "Well, how do you figure your rates then?" He said, "I don't have rates."

Q. You did not talk about cutting rates to $10 a month?

A. No, sir.

Q. Did you state that you were upset about him calling on your customers?

A. I don't recall that. I don't believe I did. I wouldn't let on to him how I felt about it.

Q. Did you tell him that those customers that he had taken away from ADT were "a bunch of dogs"?

A. No, sir.

[fol. 740] Q. Did you ask him how many alarm accounts he had?

A. Yes.

Q. Did he tell you?

A. Well now, I don't recall. I think he told me but I think he hiked it—you know, but I don't recall. I really don't.

Q. Was there any kind of agreement or understanding entered there between you and Mr. Damon?

A. No, sir.

Q. Why did you go to see Mr. Damon?

A. Under instructions from the District Sales Manager.

Q. To do what?

A. Contact him and find out if there was a possibility of arriving at what he might be charging for his services?

The Court. Did you state exactly what you have told so far as you remember what you were told?

The Witness. The only thing I was told, your Honor, was to give a report on the competitive situation with the Damon Alarm Company.

The Court. In one sentence you were given your instructions?

The Witness. No. I believe it was a form letter that came out.

The Court. In this instance your instructions were [fol. 741] in writing and not oral?

The Witness. My instructions that I had received were orally.

The Court. Well, I asked you: What were those oral instructions?

The Witness. The District Sales Manager asked if I knew Mr. Damon and I said Yes, I knew him when he was employed by the company. He says, "Well, do you know him well enough that you could take him out and buy him a lunch" and I said, "Yes", which I did under his instructions.

The Court. Well, he just didn't tell you to buy him a lunch, did he?

The Witness. That is all he said.

First I asked him if he wanted to go and he said No, he said he didn't have time to go out. I think he was

catching a plane at that time and he asked me if I wouldn't the next day call him and ask to have lunch with him.

The Court. Did he suggest that you talk about the World Series baseball games at lunch?

The Witness. No, sir.

The Court. What did he say you should talk about at lunch?

[fol. 742] The Witness. About business in general and the competitive situation.

The Court. And what else?

The Witness. Damon's prices.

The Court. What else?

The Witness. Well, that was about the gist of it.

The Court. What did he say about prices?

The Witness. Well, gee, like I said a minute ago, he said that he knew he could put in an alarm cheaper than the ADT could—same alarm,—having had experience, that he could put it in cheaper.

The Court. What I want to know is: What instructions were you given with respect to what you should say or ask about prices at the luncheon?

The Witness. Well, the instructions I had had nothing to do with prices. The instructions I had was to see him and talk to him. At that time there was some talk about him trying to sell out to ADT but it never come to pass.

The Court. I have forgotten the name of the man who was your superior when he was talking with you.

What was his name?

The Witness. W. W. Dooley.

The Court. Mr. Dooley told you to take this man out to lunch, is that right?

[fol. 743] The Witness. That's right.

The Court. What else did Mr. Dooley tell you about what you should talk about at lunch? You told me he didn't tell you to talk about the World Series.

The Witness. No.

The Court. And I believe you. Now will you please tell me what he told you to talk about?

The Witness. He told me to talk about business, about the accounts that we had apparently lost to Damon, and in generalities that is what was covered,—business.

The Court. Didn't he say anything else more specific that you might point your conversation toward?

The Witness. No, sir.

The Court. You mean he just said, "Go out and talk about business"?

The Witness. He did that for the simple reason that he knew I knew this man.

The Court. I see. And what do you believe he was talking about? What was it that you understood him to rely upon you to know without his having had expressly said so? Do I make myself clear?

The Witness. No. I didn't quite get that.

[fol. 744] The Court. Well, all right, you told me that Mr. Dooley knew that you knew about business and that, therefore, he told you to talk about business; he would already realize the kinds of things about which you would talk, is that right?

The Witness. Yes, sir.

The Court. What were the kinds of things which you understood Mr. Dooley expected you to talk about?

The Witness. Well, he expected us to talk, for one thing, about the accounts that we apparently have lost to contracts submitted and which Mr. Damon secured after we received our cancellation. We talked about that during the conversation. We talked about the charges that he was carrying and we talked about the number of accounts that he was getting and that was about it. That was just about the gist of it.

Q. You went there to find out what you could about that competitor's operation?

The Court. Just a moment. He is your witness, if you please. You may ask him questions but you may not lead him.

Mr. Fritz. That is all I have of this witness.

The Court. Are there any other questions on either elasticity of demand or demand and supply with [fol. 745] respect to a particular company?

Mr. Story. Mr. Morrison will handle the cross-examination of this witness.

Mr. Morrison. We have no questions.

The Court. All right.

[fol. 746] EDWARD CARRIER, Sworn

By Mr. Fritz, Jr.:

Q. Will you please state your full name?
A. Edward Carrier.
Q. Where do you live, sir?
A. 705 Southwest 45th Street, Oklahoma City.
Q. Are you in the employ of ADT?
A. Yes, sir.
Q. In what capacity are you employed?
A. As a sales representative.
Q. For how long have you been so employed?
A. Since about 1956.
Q. Prior to that time were you in the employ of ADT?
A. Yes, sir.
Q. In what capacity?
A. As a city foreman in Oklahoma City and Fort Worth.
Q. City foreman does what?
A. In charge of installation and maintenance of the equipment.
Q. ADT has a central station in Oklahoma City?
A. This is true.
Q. Do you sell central station service?
A. Yes.
Q. Do you sell any other form of service for ADT in the service area of the central station in Oklahoma City?
[fol. 747] A. Yes, I sell local alarm systems.
Q. Are there any competing alarm companies in Oklahoma City?
A. Yes, sir, there are.
Q. Who are they?
A. Security Burglar Alarm Co., A & A Lock Co., Southside Merchants Patrol, Safety Systems, Inc., and a couple of other smaller companies.
Q. What type of alarm service is furnished by the Security Company?
A. They furnish central station and local service.
Q. Do they provide approved central station service?
A. Not at this time.
Q. Neither for burglary nor fire?

A. Not to my knowledge, no.

Q. They do operate a central station, however?

A. This is true.

Q. For low long has that central station been in operation?

A. I think since the central station was installed in the building that they are in now—since September 1963.

Q. Do you know where or how that company was operating prior to the erection of that building in September 1963?

A. Well, they were operating as a local alarm company and then they were operating with alarms in a [fol. 748] telephone answering service in the Leon Hart Building.

Q. What forms of service are furnished by those other companies that you mentioned? Excuse me, does Security sell local alarms at the present time?

A. Yes.

Q. Now, those other companies you mentioned: What forms of alarm service are they providing?

A. Well, they sell local alarm service with the exception of Safety Systems, Inc. I understand they are selling a service that automatically dials to either the police or fire department and reports that there is a fire or a burglary in process through a recording that is previously made and attached to this system.

Q. Do I understand that there is a system inside the protected premises that is activated upon the occurrence of some hazard?

A. Yes.

Q. And that this, in turn, activates a record player?

A. Type of a recorder.

Q. And there is an automatic dialing of the telephone and these messages are transmitted to the police or fire department?

A. This is correct.

Q. What other forms of service are there in Oklahoma City?

[fol. 749] A. Well, there are auxiliarized fire alarm systems. There are direct connected burglar alarm systems and direct connected fire alarm systems. Now, by Oklahoma City I am speaking about the Oklahoma City area.

Q. Are you talking about the area wherein ADT furnishes central station service?

A. This is true, yes.

Q. In Oklahoma City proper is auxiliary fire alarm service permitted?

A. There are auxiliary fire alarm systems in Oklahoma City proper, yes.

Q. Do you attempt to sell central station fire alarm service?

A. Correct.

Q. Have you attempted to sell central station fire alarm service to any establishments in Oklahoma City and have the prospect refuse your offer and take instead auxiliary service?

A. Actually, to my knowledge, just in one instance.

Q. What was that?

A. The John Deare Co.

Q. John Deare. That is the farm implement company?

A. Farm implement company.

Q. Have you sold central station fire alarm service [fol. 750] to establishments similar in type of business and similar in your view with respect to their protection problems?

A. Yes, sir.

Q. Have you sold central station service to establishments similar to John Deare in Oklahoma City?

A. Well, similar, yes.

Q. Would you tell me about it?

A. Well, the Warehouse Company, the Commercial Warehouse Co. is in my opinion a similar establishment because they do store a similar type of equipment.

Q. Do you mean farm machinery?

A. Yes.

Q. And you have sold central station fire alarm service to such an establishment?

A. Yes.

Q. In Oklahoma City?

A. Right.

Q. They are similarly located in so far as the neighborhood is concerned?

A. I would say so, yes.

Q. Have you sold central station burglar alarm service to retail establishments in Oklahoma City?

A. Yes, I have.

[fol. 751] Q. What kinds of establishments?

A. Generally most types of retail establishments and wholesale, such as jewelry, liquor, pawnshops, dry goods stores, lumber yards, that type of business.

Q. Have you sold local alarm service to establishments of that type?

A. Correct.

Q. And central station service also?

A. This is true.

Q. Can you give me any specific instances? You mentioned pawnshops.

A. Pawnshops? We have three central station pawnshops in one immediate area that have central station alarm systems on them. We have one pawnshop in the almost immediate area, just one block away, that has a local alarm system on it. These are all ADT systems.

Q. Are there any other pawnshops in that same area?

A. Yes, there are. There are three more pawnshops right there in the immediate area.

Q. Do you know what alarm system, if any, they use?

A. Yes. They use Security local alarm systems.

Q. Are these establishments similar in size?

A. Yes.

Q. Have you been in them?

A. I have.

[fol. 752] Q. Is the operation carried on in there basically the same in each of them?

A. I would say so, yes, sir.

Q. Do their inventories appear to you to be basically the same or generally the same?

A. Generally the same. If anything, one of the pawnshops that has a local system has a little larger inventory than those with central station.

Q. And these are all within the range of your central station service—all of these?

A. Correct.

Q. Does a situation similar to that prevail in other instances? You have mentioned other forms of business establishments?

A. Yes, sir.

Q. For example, you mentioned liquor stores.

A. Yes, this situation exists.

Q. You find some liquor stores using local alarm systems and others using central station?

A. This is true.

Q. You have been selling alarm service and you have been installing systems for many years. Do you feel that on the basis of your experience in construction work and sales you can evaluate an establishment and determine [fol. 753] whether or not that establishment is a prospect for central station service?

A. Yes, I can.

Q. Do you find that you have been selling and has it been your experience that you have been selling local alarm services to central station prospects in Oklahoma City?

A. This is true.

Q. Do you first attempt to sell them central station service?

A. Yes, sir.

Q. Do you find when you approach what you regard to be a central station prospect and quote unsuccessfully that one of your competitors secures the job?

A. Yes.

Q. Can you give me some illustrations? Can you give me the type of business involved?

A. Well, jewelry stores. There is Zayle's Jewelry Store at one time used our central station system and have reverted to local systems, both ours and competitive local systems. The liquor stores—we have both central station and local, and our competitor has a great number of local systems on liquor stores, I would say, of approximately equal valuation.

Q. And with respect to their location and the neighborhood—and I am thinking now of high crime rate and low [fol. 754] crime rate—whether they are in a populous area downtown area. Are these liquor stores, some of which use central station and some of which use local alarm systems, in your judgment basically, substantially, the same from the viewpoint of their risk or the hazards involved?

A. Yes, they are.

Q. You mentioned wholesalers and distributors, I believe, before.

A. Wholesale liquor dealers.

Q. I see. How about industrial establishments?

I will withdraw that. How about banks in Oklahoma City? Do you provide service to them?

A. We provide central station service to some of the banks in Oklahoma City.

Q. There are other banks not using alarm service?

A. This is true.

Q. Are there some using alarm service of other companies?

A. Yes.

Q. Are you familiar with what they are using?

A. Well, the First National Bank uses a McLennon system, which is now handled, I believe, by the Diebold people. This is the largest bank in Oklahoma City. It is a [fol. 755] direct-connected to the police station. They have both holdup alarm service and vault alarm service.

Q. Have you sought at any time to sell central station service to that bank? Did you say that it is the largest bank?

A. That is the largest bank, yes.

Q. Have you sought to sell central station service to them?

A. Yes.

Q. At the time you solicited that prospect did it already have the direct connection in place?

A. Yes, it did.

Q. Are you familiar with the form 400 used by ADT?

A. Correct.

Q. Do you fill them out each time you make a sale?

A. Yes.

Q. Do you state therein a valuation for the contents of the protected premises?

A. Yes, I do.

Q. How do you know what it is?

A. Actually, by observation and by asking the customer his approximate insured valuation.

Q. You are familiar also I assume with the Form 701?

A. Yes, sir.

Q. Do you have to fill out a Form 701 each time you lose out a prospect to a competitor?

[fol. 756] A. Yes, sir.

Q. Is that the rule of the company?

A. Yes.

Q. Do you do it every time you use that?

A. No, sir.
Q. What?
A. No, sir, I do not.

The Court. Is this a convenient time for a recess? Are you almost through?
Mr. Fritz, Jr. I am almost finished.
The Court. Proceed.

[fol. 757] Q. Have you sold any proprietary systems in Oklahoma City?
A. Yes, sir.
Q. To whom?
A. Federal Aviation.
Q. Do you have any proprietary alarm competitors in Oklahoma City?
A. Well, there are others, at least one other proprietary system in Oklahoma City that I have knowledge of.
Q. What is that?
A. In the Western Electric Manufacturing plant.
Q. Is that in Oklahoma City?
A. That is in Oklahoma City.
Q. Is it using a proprietary system?
A. Yes.
Q. Is that a new plant?
A. Comparatively new, yes.
Q. Did you seek to sell central station service to Western Electric?
A. Yes, sir.
Q. Did you also submit a bid for a proprietary system?
A. No, I don't believe we did, sir.
Q. What type of proprietary system is in there, do you know?
[fol. 758] A. Well, the sprinkler service is Auto Call. They have some Kidde burglar alarm service. Then they have attached two of our systems—not systems but units—to this same system.
Q. As a part of the proprietary system?
A. As a part of this proprietary system, yes.
Q. Is this attached to a console that is handled by the guards?
A. Yes, sir.
Q. Is it tied in to their phone system?

A. It is tied in to a telephone console and also incorporates a television-type system.

Q. Based on your experience, when you submitted your bid for central station service, were you of the view that that establishment could have been appropriately protected by central station service and was similar in nature to others to which you had sold central station service?

A. Yes, sir.

Q. Why would you not file 701's in cases where you lost out to a competitor?

A. Well, sometimes time would not permit it. The first thing you know a couple of weeks have gone by and you have forgotten. Your memory is refreshed some time later [fol. 759] and you just don't have all the facts available.

Q. Now I want to ask about the situation where you do win an account or secure an account in competition with another company. In a case like that do you always fill out a 701?

A. Yes, sir.

Q. Why is that?

A. Well, this is a hard and fast instruction, as I understand it.

Q. Have you, while selling central station service in Oklahoma City, found it necessary to reduce the MBR, the ADT MBR rates in order to secure business?

A. Yes, this is true.

Q. You were making price concessions because other companies were competing against you?

A. On occasion, yes.

Q. And there are no other approved central station companies in Oklahoma City, are there?

A. No, sir, there are not.

Mr. Fritz, Jr. Thank you, sir.

The Court. Is there any cross-examination?

Mr. Story. No, your Honor.

The Court. All right. I will take a recess for 15 minutes.

[fol. 760] (Recess.)

[fol. 761] The Court. Next witness, please.

LAWRENCE M. DE SCHANE, Sworn

By Mr. Conkling:

Q. Mr. De Schane, will you state your full name?

A. Lawrence M. De Schane, 3112 Westfield Avenue, Fort Worth, Texas.

Q. What is your present occupation?

A. I am retired from ADT.

Q. What is your present occupation?

A. I am selling heavy equipment for C. H. Collier Company in Dallas.

Q. You were formerly employed by ADT Company?

A. Yes, sir.

Q. And you are now retired?

A. Yes, sir.

Q. When did you retire?

A. September 1st, 1962.

Q. When were you first employed by the ADT Company?

A. July 1929.

Q. In what capacity?

A. As a signal operator.

Q. Did you thereafter go into sales?

A. Yes, sir.

[fol. 762] Q. And on July 1, 1955, what was your position?

A. I went to St. Louis as district sales manager.

Q. Was that your position from that date until your retirement?

A. Yes, sir.

Q. Incidentally, what is your age, Mr. DeSchane?

A. 58.

Q. What is the normal retirement age for the ADT Company, if you know?

A. Well, with 30 years or 60.

Q. Were there any particular circumstances concerning your retirement?

A. Yes, sir. I have had an acute coronary thrombosis.

Q. Did your St. Louis district, Mr. DeSchane, include Peoria. Illinois?

A. Yes, it did.

Q. Is there another central station company in Peoria, Illinois, now?

A. Yes, there is.

Q. Do you recognize the name Ephraim B. Oberlander?

A. Yes, sir.

Q. Who is Mr. Oberlander?

A. He is president of the other company.

[fol. 763] Q. Do you recall the name of that other company? If I say Protection Alarms, Inc., is that the name?

A. Something like that. I believe that.

Q. Of Mr. Oberlander's company?

A. I believe so.

Q. Before July 1, 1955, had you ever met Mr. Oberlander?

A. No, sir.

Q. Approximately when for the first time after July 1, 1955, if you recall, did you meet Mr. Oberlander for the first time?

A. Later in the fall of 1955.

Q. Now, Mr. DeSchane, I have in my hand a transcript of certain testimony given by Mr. Oberlander on what is called "Deposition." He has not come into the court room as you have but he has testified, and I would like to read to you a portion of the testimony?

Mr. Story. Your Honor, I object to that statement and request it be stricken from the record.

The Court. Overruled.

Mr. Conkling. Thank you, sir.

Q. There is at page 16 of Government Exhibit 342 a question which was put to Mr. Oberlander by the Government lawyer, "Now, sir, would you tell us as best you can [fol. 764] recollect what took place at that luncheon meeting?"

Was there a luncheon meeting that you recall?

A. Yes, sir, I recall.

Q. Well now, Mr. Oberlander answered that question, saying, "Well the principal topic of conversation was about our going into the central station business and that they weren't happy,"—meaning you weren't happy—"about the fact that a new central station company was going into business in Peoria, Illinois"?

A. Well, to be honest with you, I don't suppose I was particularly happy about it.

Q. Did you have lunch with Mr. Oberlander to welcome him into the central station business in Peoria, Illinois?

A. No, sir. I had lunch only to meet him.

Q. Don't you harbor the brotherly love that one competitor usually harbors for another?

The Court. What do you call leading questions, Mr. Conkling?

Mr. Conkling. I withdraw, sir.

Q. If you recall the circumstances of your meeting at that luncheon in 1955 with Mr. Oberlander, will you please tell the Court?

A. Well, it has been a long time ago.

[fol. 765] The Court. Do you remember it at all?

The Witness. Not too well, sir.

Q. Would you tell the Court what you remember?

The Court. Wait just a moment, please. Do you have any real recollection of it before you talked to counsel about it?

The Witness. I recall having had the lunch—having been there. Yes, sir, I do.

The Court. What else did you recall before you talked with counsel?

The Witness. Well, I recall I learned through one of my associates in ADT that Mr. Oberlander had been employed as an electrical contractor to install our 110 and conduit wiring and later decided to go into the business for himself.

The Court. Now, what else did you recall after you conferred with counsel?

The Witness. I can't relate any of the real conversation at the table, sir. It is just too far back for me.

The Court. Did counsel show you the transcript which he has just read to you?

The Witness. No, sir.

The Court. Did he tell you about the deposition [fol. 766] that had been taken?

The Witness. I heard there was a deposition taken but I had not seen it, sir.

The Court. Who told you about that deposition?

The Witness. Well, I think I heard through one of our company officials that I had been mentioned in a deposition.

The Court. Did you get a letter about it?

The Witness. I don't recall whether it was a letter or a telephone call.

The Court. And what was said?

The Witness. That I had been accused or mentioned of having discussed in some manner the prices that he might charge or that we were charging or him asking about prices. I do recall him having said he had visited other protection companies around the United States and I do remember having said that we did not divulge our rates to any competitor. This may not be the wording but the general gist of the thing——

The Court. When you were reminded of this conversation by an inquiry a few weeks or months ago, who spoke to you?

The Witness. I am not sure. I think maybe Ray Brechbill called me on the telephone.

[fol. 767] The Court. Have you really a poor memory of this?

The Witness. Yes, sir, I sure do.

The Court. Do you have a poor memory of the original conversation years ago?

The Witness. It has been nine years ago.

The Court. So you really don't remember much about it, if you can't remember anything of a few months ago; is that right?

The Witness. I certainly don't remember much about it.

The Court. Thank you.

Q. Well, do you remember this much about it, Mr. DeSchane:

Did you discuss specific prices or pricing arrangements with Oberlander?

A. No, sir.

Q. Did you use or words or commit any deeds that in your mind could have been understood by Oberlander to be a threat to stay out of his territory?

The Court. May I point out that this is the most leading kind of question. If you think I am going to pay the slightest attention to this when he has told me that he doesn't

recall what went on and you are just asking him whether he didn't talk about certain things, of course he is going [fol. 768] to answer he didn't talk about them, but he has already said he doesn't remember anything about it.

Mr. Conkling. I thought he had previously testified that he did remember.

The Court. Well, he did, and then he didn't remember three months or some months ago, and said his memory was even dimmer of what happened nine years ago.

Mr. Conkling. I think that is a very normal reaction, your Honor.

The Court. So do I.

Mr. Conkling. Most people aren't that good.

The Court. Most people don't remember such things in a trial.

Mr. Story. No cross-examination.

[fol. 769] ROY ELLIOTT, Sworn

Mr. Williams. Your Honor, Mr. Elliott has a slight difficulty in speaking.

By Mr. Williams:

Q. Can we have your full name, Chief?

A. Roy Elliott, 17 Garland St., Everett.

The Court. Would it make you more comfortable to write your testimony on the blackboard?

The Witness. That is according to how much testimony there is, your Honor.

The Court. I think you are able to speak all right once you feel at home.

Mr. Elliott, what is your official position?

A. Well, fire chief in the City of Everett Fire Department.

The Court. Why don't you lead him about this kind of material?

Q. Mr. Elliott, is it true that in the City of Everett there are certain types of fire alarms that are directly connected to your fire headquarters?

A. That's right.

Q. Are there auxiliary master box systems connected to your fire headquarters?

A. That's right.

Q. Approximately how many such connections are there?

[fol. 770] A. Well, what system are you referring to?

Q. Referring now to the master box auxiliary type system.

The Court. Have you got it all written out?

The Witness. Yes.

The Court. Why don't you hand the sheet to counsel?

The Witness. He already has a copy.

The Court. Just a moment, please. Hand the sheet to counsel, and probably you can both agree that this is what he would testify to.

Mr. Williams. May I remain here with the witness?

The Court. Yes, and you may show it to Mr. Story.

Mr. Story, you may look at that sheet too.

Mr. Story. Very well, your Honor.

[fol. 771] Mr. Williams. We may be able to settle this by stipulation with a statement, your Honor.

The Court. All right. Please state it.

Mr. Williams. In the City of Everett there are located approximately 44 auxiliarized systems connected to the City Fire Alarm Telegraph System consisting of Gamewell connections, and these systems are on premises both commercial and public, and they encompass both sprinkler systems and automatic rate of rise fire alarm systems.

The Court. And the exact percentage of each or the number of each is shown on that sheet.

Mr. Williams. Yes.

The Court. The sheet as a whole is admitted in evidence.

(Tabulation sheet—City of Everett, marked Defendants' Exhibit K.)

The Court. Is there anything else?

Mr. Williams. Yes, your Honor. There are a few more items. In addition to the auxiliary connections just outlined there will be approximately 14 systems which are supervised by central station service, American District Telegraph Company.

Q. Is that correct, Chief?
[fol. 772] A. Yes.

Mr. Williams. In addition to that there will be ten central station alarms that are supervised by the Call's Police Signal and Alarm Company of Boston.
The Court. Is that right?
The Witness. That is right, sir.

Q. Chief, how far is the Town of Everett from the city limits of Boston?
A. Right next to it.

The Court. It is next to the City of Boston. Do you mean from City Hall to City Hall?
Mr. Williams. The witness' answer is sufficient for our purposes, your Honor. It is contiguous to the city. I have no further questions of this witness.
Mr. Story. I have no questions.
The Court. You are excused. Thank you. The next public officer who is here.

GEORGE L. MARTIN, Sworn

Direct examination.

By Mr. Williams:

Q. Would you state your full name, please?
A. George L. Martin.
[fol. 773] Q. Where do you live?
A. 62 Kessler Avenue, Lynn, Massachusetts. I am here representing the Acting Chief, George W. Donnelly.

The Court. Have you a table showing certain things on it?
The Witness. Yes, sir, your Honor.
The Court. What does the table show in general?
The Witness. I have——
The Court. Alarm systems?
The Witness. There is listed here the burglar alarm systems tied into the Central Police Headquarters in Lynn.
The Court. Will you gentlemen look at it to see if you have any objection?

Mr. Story. No objection.

The Court. There being no objection the table is admitted.

Mr. Williams. There is no objection.

Mr. Story. No objection.

The Court. Is there anything else?

Mr. Williams. Not of this witness, your Honor.

[fol. 774] (Tabulation sheet—Lynn, Mass., marked Defendants' Exhibit L and received in evidence.)

The Court. The next witness. The same procedure, please, gentlemen.

HENRY FITZGERALD, Sworn

Direct examination.

By Mr. Williams:

Q. What is your name, sir?

A. Henry Fitzgerald.

The Court. Where are you located?

The Witness. Everett Police. I am a Lieutenant in the Everett Police Department.

Mr. Williams. May we take a moment, your Honor, while counsel look at the table?

The Court. Yes.

Mr. Story. No objection, your Honor.

The Court. The table is admitted.

(Table Sheet—Everett, Mass., marked Defendants' Exhibit M and received in evidence.)

The Court. The next witness, please.

[fol. 775] WALTER HENNESSEY, Sworn

Direct examination.

By Mr. Williams:

Q. What is your name, sir?

A. Walter Hennessey.

Q. What is your position?

A. Chief of the Braintree Fire Department.

The Court. You have a table with you, too?
The Witness. Yes, sir.
The Court. Would you step up, Mr. Story, please, and examine it?
Mr. Story. No objection.
The Court. Admitted.

(Tabulation sheet—Braintree, Mass., marked Defendants' Exhibit N and received in evidence.)

The Court. All right. Next witness. You are excused.

JOHN VINCENT POLIO, Sworn

Direct examination.

By Mr. Williams:

Q. Your full name and address?
A. John Vincent Polio, 6 Porter Avenue, South Braintree, Chief of Police, Braintree Police Department.

Mr. Story. No objection, your Honor.
[fol. 776] The Court. Admitted.
(Tabulation sheet—Braintree, Mass., marked Defendants' Exhibit O and received in evidence.)

The Court. Next witness.

ROBERT E. LANDICK, Sworn

Direct examination.

By Mr. Williams:

Q. Would you state your full name and address and title, sir?
A. Robert E. Landick, Assistant City Electrician, Lynn, Mass.

Mr. Williams. Mr. Landick has a list also, your Honor.
Mr. Story. No objection.
The Court. There being no objection, it is admitted.

(Tabulation sheet—Lynn, Mass., marked Defendants' Exhibit XP and received in evidence.)

Mr. Williams. I will have to ask one or two questions of this witness.

The Court. All right.

Q. Mr. Landick, are there in the City of Lynn a number [fol. 777] of connections made directly to the police headquarters by means of wire for burglar and hold-up alarms?

A. There are no sprinkler systems connected with the police department.

Q. I said burglar and hold-up alarms.

A. The banks are connected, all our banks are connected. That is the only type of building that is connected with the police department, the banks.

Q. These are directly connected by wire from the bank?

A. No. They are not connected by water.

Q. By wire.

A. By wire, oh, yes, directly connected by wire.

Q. And approximately how many banks are so connected?

A. Approximately ten.

Q. These are both burglar and hold-up alarm systems?

A. Yes. There is a notification—a button they can actuate and that trips the master box, and it goes to the police station.

Mr. Williams. No further questions.

The Court. I hope you have a witness from Arlington.

Mr. Williams. I did not want to burden the Court with Arlington.

The Court. There was a second bank robbery [fol. 778] there yesterday, within a few months. Evidently you do not read the papers.

Mr. Williams. We haven't had the opportunity, your Honor. I have one last officer.

THOMAS SHERMAN, Sworn

Direct examination.

By Mr. Williams:

Mr. Williams. I believe Mr. Sherman has a listing with him also, your Honor.

Mr. Story. No objection, your Honor.

The Court. We haven't his name on the record yet.

Mr. Williams. No. That would be a good idea.

Q. What is your name, sir?
A. Thomas Sherman.
Q. What is your address?
A. 62 Hawthorne Street, East Weymouth.
Q. What is your position?
A. Deputy Chief of the Fire Department.

The Court. Admitted.

(Tabulation sheet—Weymouth, Mass., marked Defendants' Exhibit XQ and received in evidence.)

[fol. 779] The Court. The next witness.

Mr. Williams. I believe, your Honor, that takes care of the public officials.

The Court. All right.

Mr. Williams. Could we have a moment, your Honor?

The Court. Surely.

Mr. Fritz. With your Honor's permission, could we suspend a few minutes to talk with Mr. Story? We have a lot more information of this general type.

The Court. Would you tell me how many more witnesses you have today?

Mr. Fritz. We want to obviate calling any more witnesses.

Mr. Williams. There are about 50 such segments of testimony, which I think we can put in book form if we can get some agreement on it.

The Court. I think the chances are very good, but I think Mr. Story would require a little time to look at it. Is that all that is left for today?

Mr. Fritz. That is all that is left for this morning but——

[fol. 780] The Court. How about taking the recess until two o'clock now?

Mr. Fritz. That I think would be appropriate.

The Court. And at two o'clock we will come back.

Mr. Fritz. Thank you, sir.

(Recess.)

[fol. 781] AFTERNOON SESSION

The Court. Were you gentlemen able to agree?

Mr. Williams. Yes, we are, your Honor, and I think a short statement for the record,—Mr. Story will correct me if I misunderstand the import.

It is stipulated by and between counsel that three sheets representing the Boston, Brockton and Salem areas showing municipal connections to alarm systems—that if witnesses from the various police and fire departments were called, they would testify to the number of connections shown on this sheet. It is on three sheets.

It is my further understanding that the Government has no objection to that procedure but does object, of course, to the admission of the material into evidence.

The Court. The procedural objection being waived, I overrule the substantive objection and admit the document over the Government's substantive objection.

Mr. Story. Your Honor, I have one further thing that I would like to place on the record.

This morning in connection with these five municipal fire chiefs and police chiefs, when the Government indicated that it had no objection, that went to the manner of intro-
[fol. 782] duction, but we do object to it as being completely immaterial.

The Court. So I understand. The objection is overruled. My overruling doesn't indicate anything about what I will do in the final findings, conclusions and judgment.

I have just admitted exhibits, three in number. They are the next three defendants' exhibits.

Mr. Fritz. If your Honor please, the suggestion has been discussed among counsel and we just offer it to your Honor as a thought,—we were wondering whether your Honor would be interested to see and examine and inspect a central station.

The Court. Not at all. Thank you.

Mr. Fritz. Very well, sir.

[Off the record.]

[fol. 783] JAMES O. MAXEY, Sworn

By Mr. Fritz:

Q. Will you state your full name and address, please?

A. My name is James O. Maxey. I live at 2378 Lancaster Street in East Meadow, New York.

Q. Will you try from here to keep your voice up so every one of us can hear? You are in the employ of the defendant ADT Company, are you not?

A. Yes, sir.

Q. How long have you been in its employ?

A. 28 years, sir.

Q. And what was the nature of the beginnings of your service with the company?

A. I began with the company in Washington, D. C., in our Service Department in 1936.

Q. Doing what?

A. My first position was actually in a clerical capacity, —in the Service Department.

Q. Did you engage in sales work?

A. Not in those years.

Q. Later on?

A. Later on, yes, sir.

Q. What years?

A. I transferred to the Sales Department in 1950 in Washington.

[fol. 784] Q. What is your present job?

A. Presently I am manager of our Government sales division.

Q. How long have you had that job?

A. Since 1960.

Q. What does the management of the Government Sales Division of ADT entail? What are your duties, in other words?

A. Yes. My division——

The Court. Your duties were asked.

A. My duties are supervision of the division under the General Sales Manager of Sales to the United States Government and its agencies.

Q. Through your services and functions do you supervise the sale to the Government in various places through-

out the United States of different types of protective services and systems?

A. I do, sir.

Q. Have you prepared at my request a document which lists as of the end of the year, December 31, 1963, by cities the names of the various installations of the Government and the type of service which is furnished to the Government at those locations?

A. Yes, sir, I did.

Q. I show you——

[fol. 785] The Court. That is immaterial.

Mr. Fritz. I beg pardon?

The Court. Do you tell me that is material?

Mr. Fritz. That's right, your Honor.

The Court. Why don't you show it to Mr. Story?

[Three sheets showing municipal connections to alarm systems in Boston, Brockton and Salem, marked Exhibits R, S and T.]

Mr. Story. I haven't the documents, your Honor.

The Court. Are you satisfied not as to their relevance but as to their procedural regularity?

Mr. Story. Your Honor, I will take their word that this is what the Government has. I have no objection to allowing this to be introduced into evidence but as to other objections, I will have objections.

The Court. You had better make them for the record because I am going to admit the document.

Mr. Story. Well, your Honor, I object to this document here, particularly because I don't know what they are offering it for, but it appears to be that it is immaterial and the other thing is that in this particular case we object because we think that the insurance organizations are one of [fol. 786] the people who require the standards in this case, and the Government is self-insured, and for that reason alone it is immaterial because the Government is self-insured and insurance does not come into the thing. That is my objection.

The Court. All right. Admitted. Objection overruled.

[List of Government installations marked Exhibit U.]

Q. This is defendants' exhibit, Exhibit U, Mr. Maxey, which is the list of Government installations just admitted

in evidence, contains on the right side a column headed, "Type of service."

A. Right.

Q. And underneath that there are various symbols, are there not?

A. That's right.

Q. But at the top those symbols are explained so as to tell what type of service is furnished at each of the locations mentioned on the list, is that right?

A. Yes, sir.

Q. There is no special or separate designation of proprietary in this list or in the legend at the top, that's correct, isn't it?

[fol. 787] A. Yes, there are three separate designations there.

Q. Yes, I know that, but I say "proprietary" is not one of them.

A. No, sir. It is included in one of them.

Q. Under which one is it included?

A. It is included under the DCL. That is direct connected local and proprietary.

Q. In addition to that, have you prepared at my request an exhibit showing service locations of Government installations and the number thereof in each area, also major installations of ADT systems with no maintenance and the number of such systems; also the number of installations in the European and in the Pacific area?

A. That is right.

The Court. European area?

Mr. Fritz. Yes, sir, for the United States Army.

Q. Is that correct?

A. That is correct.

The Court. Admitted.

[Document showing service locations of Government installations marked Exhibit V.]

The Court. Don't spend too much time on the European aspect.

Mr. Fritz. Yes, sir.

[fol. 788] The Court. That was addressed to the Government.

Q. Mr. Maxey, will you tell me just briefly how the Government sales are handled? We have here a list of Government installations in many locations throughout the United States. How do they come into being? How do they originate?

A. Government sales actually are made the same as any other sale,—commercial sale. In some districts we have special government representatives handling those sales. In other districts the same representatives that handle commercial sales handle government sales.

Q. And do the salesmen who handle those sales discuss the Government needs in a particular locality with a local government representative?

A. You mean——

Q. Take a place in Atlanta. How does the sale of service to a government installation arise? How does it come about?

A. You mean to the local government representative?

Q. Yes.

A. Oh, yes, indeed.

Q. That was my position.

A. Yes, right, sir.

[fol. 789] Q. What does a salesman do in such a situation? What is his procedure?

A. Well, of course, his procedure is very much the same as his selling with anyone else.

Q. What is it?

A. He interests the prospect in service in most cases. In some cases the Government might have a requirement for a particular system and will issue Invitations to Bid.

Q. Well, is it done both ways?

A. It is done both ways, yes, sir.

Q. That is sometimes it is simply a negotiated contract and other times it is a matter of formal bid?

A. That is true, sir.

Q. In all of these cases does the salesman fill out the usual type of form that the company requires in the case of the ordinary commercial transaction?

A. The very same, sir.

Q. I am talking now especially about the Form 400 and the Form 701.

A. That is right, the very same, in the very same manner.

Q. And forwards them to you, I take it?

A. That is right. They come eventually to me.

[fol. 790] Q. Do you know whether or not in the various areas in which the company has furnished service of one kind or another as to Government installations, as shown in Exhibit 2, there have been other companies seeking this work from the Government? In other words, competitors of yours.

A. Oh, yes, indeed.

Q. What types of service do you find offered by competitors for the Government installations?

A. Virtually the same type as in our commercial work.

Q. Such as?

A. Central station, direct connected, proprietary and local.

Q. Is it the fact that to your knowledge there are Government installations which have central station, direct connected, local and proprietary systems from competitors?

A. Yes, sir.

Q. As they have in the case of ADT Company, as evidenced by Defendants' Exhibit U, is that correct?

A. That is right, sir.

Q. Do you know whether or not there have been any conversions by the Government in its installations from one type of service to another over the years?

[fol. 791] A. Yes, sir.

Q. Do you have any examples of that in mind?

A. Yes. The best example I can recall involves a group of Government warehouses out in the mid-west. In the early 1950s there were six of these warehouses that bought electric protection service. Four of them were central station and two of them were proprietary.

Q. Were they substantially the same in type, size and purpose?

A. Substantially in over-all operation.

Q. Are there any examples you are aware of in Washington, itself, in connection with Government owned and operated buildings?

A. Yes, sir. One outstanding case that comes to my mind is the Department of the Navy. In the mid-50s the Department of the Navy—the main Navy building had a proprietary system. Several years later it was changed

to central station and it is central station today, the same installation.

Q. In connection with Defendants' Exhibit V, which gives the total number of Government installations and service locations in various places, does this include a statement of each and every number of service installation or sale of proprietary systems?

[fol. 792] A. I don't quite understand.

Q. Does this include the total of your Government services and installations?

A. As at the first of this year, that is right.

Q. Is it the fact that the ADT provides service for the Government at points that are classified from the security point of view?

A. Oh, yes. This other list that you have, you will note it says that that is only those that are not security classified. There are some that are not included in the list that are security classified.

Q. I do not want to ask you any questions about those. I presume you are not free to talk about them. Can you give us an idea of the number?

A. Well, I can say this much about them. Some of the locations involve elaborate security systems at the Government Relocation Centers.

Q. Let me ask you this, first. What is it that is classified, the nature of the service?

A. The extent of the service, that is right, the protection provided, and in some cases the location.

Q. Just tell me generally approximately how many such instances there are. I don't care to go into the facts.

[fol. 793] A. There are at least—well, there are three major agencies, and there are several locations under each one. I don't know the exact number.

Q. Do you have any particular instances in mind, in which you were competing for Government installations where your competitor was successful in obtaining the work? How about Dayton, does that refresh your recollection?

A. Yes, sir.

Q. What about it?

A. This is one of the big warehouse depots that I mentioned a few moments ago. That was in the early '50s. It was a central station type of operation involving sprink-

ler supervisory service primarily, some watchman supervisory service, and I believe some small amount of automatic fire alarm.

Q. Supplied by whom?

A. Supplied by ADT.

Q. Yes.

A. About—I don't remember the exact date—but it was several years later that it was changed to a proprietary type operation. Within the past year it has gone back to central station, and it was at that time we lost to our competitor Dayton.

[fol. 794] Q. Did this involve the same premises?

A. The same premises.

Q. The three that you talked about?

A. Same premises, yes.

Q. How about installations at Hammond, Indiana and Sharonsville, Ohio?

A. Those are the same type of warehouses. At Hammond, Indiana, at the time it went in, in the early 1950s, it was proprietary, and several years later it was changed to central station and it is central station today.

Q. The premises have remained substantially the same?

A. The premises remained substantially the same. At Sharonsville, initially it was central station service, and essentially had the same type of services as the other warehouses. It was later changed to proprietary, and within the past year it was lost to a competitor in Cincinnati, Ohio, the seven Ohio area.

Q. Am I correct in assuming that the Government gets proprietary systems from your company, ADT, both as a matter of outright sale and sometimes on a lease basis?

A. Yes.

[fol. 795] Q. In the majority of instances, if not all, are these installations of proprietary systems in areas that could be served by central station service?

A. I would even say, sir—well, yes, in answer to your question, Yes.

Q. Do you know what the National Art Gallery uses for protection? That is, the National Art Gallery in Washington?

A. Yes, I do.

Q. What do they use?

A. They have a system that involves water flow and sprinkler supervisory service and watchman supervisory service.

Q. Well, is it proprietary or central station?

A. It is central station, sir.

Q. Do you know if the National Archives has some kind of protective system?

A. Yes.

Q. Does it?

A. Yes.

Q. Do you know what the facts are about that?

A. I know it is now a proprietary system.

Q. Is that in the area in which central station protective service is available?

[fol. 796] A. Yes, sir.

Q. Both from ADT and another company, I take it, down there, is that correct?

A. That is correct, sir.

Q. In addition to the furnishing of services to the Government at various locations, and also the selling and leasing of proprietary systems, does the ADT furnish any other services to the United States Government to your knowledge?

A. Yes, sir. We have made it a practice to cooperate in every way possible with certain agencies of the Government.

Q. What has it done? I am sure that that is so. But would you be a little more specific and tell us about it.

A. Well, for example, we have furnished systems and technical assistance to both the Intelligence School at Fort Holibard, in Baltimore, as well as the same thing at Fort Gordon.

Mr. Story. Your Honor, I have neglected to object very much. But this is so completely immaterial and irrelevant to this matter that I do want to voice an objection at this time.

The Court. You have been heard. The objection is over-
[fol. 797] ruled. If Mr. Fritz thinks that it is advantageous to spell this out in the record, I will let him do it.

Mr. Fritz. I do, sir.

The Court. I wonder if you have got this in writing somewhere?

Mr. Fritz. No, sir. We are about finished.

The Court. All right.

Q. How about cooperation with the Federal Bureau of Investigation?

A. Yes, sir. We have on several occasions cooperated with the FBI.

Q. How?

A. In obtaining certain information. I am not at liberty to disclose certain details. They asked that this not be disclosed. It involves setting up communications and networks, and things like that.

Q. Are these situations in which charges are made to the Government for such service?

A. No, sir. This is where we cooperate, with no charge whatsoever.

Q. There is no charge, but I assume that as part of doing it there is an element of consideration of good will, is there not?

A. Well, naturally, yes, sir.

[fol. 798] Q. Do you happen to know whether or not in Government specifications for protective service there are provisions, alternate provisions for central station or for proprietary systems, from time to time?

A. From time to time, yes, sir.

Q. In other words, they call upon people like ADT and your competitors to submit bids on either basis, is that correct, or both bases?

A. Yes. I have known of that to happen.

Q. Well, there has been an instance not so long back in connection with the National Archives Building, is that right?

A. Yes, sir.

Q. What are the facts about that?

A. The National Archives system—well, the Government asked for bids within the past year for the rehabilitation and modernization of the system that has existed since the Archives was built some 20 or 25 years ago, and they asked for bids on three separate bases.

First, central station only; second, proprietary only; third, proprietary with a central station back-up.

Q. Did ADT submit bids on each of those three bases?

A. Yes.

Q. Do you know what type of service the Government [fol. 799] selected for that building?

A. They selected proprietary.

Mr. Fritz. That is all.

Mr. Story. Your Honor, I object to the entire testimony of this witness as being completely immaterial and irrelevant and I move that the testimony in its entirety be stricken from the record.

The Court. The objection is overruled. The motion is denied.

Mr. Fritz. That is all I have. Do you have any questions, Mr. Story?

Mr. Story. No.

The Court. I assume you do not.

Mr. Story. I have no questions, no, your Honor.

Mr. Fritz. I regret to have to say to your Honor that I have run to the end of my string for the day. I bore in mind the warning you gave me the other day about speed but I misjudged today frankly.

The Court. Well, I move a little more rapidly apparently than you expected on every front, whether by setting the case down or reading documents or hearing testimony. I am not treating you any differently from the way I treat [fol. 800] every litigant in this court. I have actually got my schedule down to a completely current basis.

Mr. Fritz. I understand that, sir. I only say that I have misjudged this day.

The Court. How long now do you think the remaining parts of the case will take? Off the record.

(Discussion off the record.)

The Court. What is this Plaintiff's Answers to Defendants' Request For Admissions?

Mr. Morrison. On June 10th, your Honor, the defendant Grinnell Corporation filed a Request To Admit Relating to Some Patents.

The Court. Why don't you want to admit them? They

are true, aren't they? You just don't think they are relevant?

Mr. Morrison. Insofar as the Request To Admit is concerned, we admit the first request. The second request plainly calls for a conclusion of law which we feel is certainly improper, and we object. We do admit, for the purposes of the Request To Admit, reserving our right to object to its admissibility.

The Court. What is wrong about the conclusion of law?

Mr. Morrison. I think it is improper.

[fols. 801-802] The Court. What is wrong about it?

Mr. Morrison. We do not know whether the patents were conflicting and whether or not infringement suits might arise. It is not a fact.

The Court. All the Requests For Admissions will stand as admitted except insofar as they are denied.

(Whereupon at 2.25 p.m. the trial was recessed to Monday, June 22, 1964, at 10 a.m.)

[fol. 803] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 2785

Transcript of trial—June 22, 1964

[fol. 804] The Court. It is not quite 10. I assume counsel are not quite ready, is that right?

Mr. Story. The Government is ready, your Honor.

The Court. How about Mr. Fritz? Has he arrived?

Mr. McInerney. I believe he is outside, your Honor.

The Court. I am ready to go right into that case now. I realize I am a little ahead of time.

Mr. Fritz. I can make an offer of certain documents that may use up a few moments, your Honor. I am waiting for some people to arrive.

The Court. All right.

OFFERS IN EVIDENCE OF DEFENDANTS' EXHIBITS AND OBJECTIONS THERETO

Mr. Fritz. In behalf of the defendant Alarm Company ADT I offer in evidence designated documents bearing exhibits numbers previously marked A-1 to F-67.

The Court. Is there any objection?

Mr. Story. Yes, your Honor. Just for the record, I have read these documents over the week end, and I think they are completely irrelevant and immaterial and have no probative value. Some of these documents are letters from third-parties to third-parties, manufacturers of devices, and I cannot see how they have any probative [fol. 805] value. The Government does object.

The Court. Objection overruled. Admitted.

(Designated documents bearing Exhibit Numbers previously marked A-1 to F-67 received in evidence.)

Mr. Fritz. I also offer on behalf of Holmes Electric Protection Company Exhibit No. H-1 to H-42, inclusive.

The Court. The same objection?

Mr. Story. Yes, your Honor.

The Court. The same ruling. Admitted.

(Designated documents bearing Exhibit Numbers previously marked H-1 to H-42, inclusive, received in evidence.)

Mr. Fritz. I also offer on behalf of the defendant Fire Alarm Company Exhibits I-1 to I-6, inclusive.

The Court. The same objection?

Mr. Story. Yes, your Honor.

The Court. The same ruling. Admitted.

(Designated documents bearing Exhibit Numbers previously marked I-1 to I-6, inclusive, received in evidence.)

[fol. 806] Mr. Fritz. I will offer in evidence excerpts from depositions previously marked bearing Exhibit Nos. W-1 to W-47, inclusive.

The Court. The same objection, the same ruling, admitted.

Mr. Story. Your Honor, in that regard, I would like to ask Mr. Fritz if he is offering these entire depositions or the designations?

Mr. Fritz. I said the excerpted material.

The Court. So I understood. That was my order of admission.

(Excerpts from depositions previously marked bearing Exhibit Nos. W-1 to W-47, inclusive, received in evidence.)

Mr. Story. There is just one further thing, your Honor. We don't feel strongly about it. The Government has no objection, under your Honor's ruling, to let the whole thing go in, but over the week end we did cross-designate a few pages, which would cut down the volume of the record.

The Court. No, it would not cut down the volume of the record. It would take that much longer to consider the matter—unless you are agreed on this?

Mr. Story. Very well, your Honor.

[fol. 807] The Court. Next. Did you offer something, Mr. Williams?

Mr. Williams. I was handing to the Clerk the copy of the transcripts.

The Court. The carton has no special significance.

Mr. Williams. No, your Honor.

Mr. Fritz. With the permission of the Court, may Mr. Williams go ahead with a short witness?

The Court. Yes.

DANIEL FRANCIS COLLINS, Sworn

Direct Examination.

By Mr. Williams:

Q. Would you state your full name and address, Mr. Collins, please.

A. Daniel Francis Collins. Home address?

Q. Yes.

A. 31 Audrey Road, Belmont, Massachusetts.

Q. Are you connected in any capacity with the New England Insurance Rating organization?

A. Yes, sir.

Q. What is your position, sir?

A. Manager of the Sprinkler Department.

Q. How long have you been associated with that group? [fol. 808] A. 46 years.

Q. What is the purpose of the New England Insurance Rating organization? What does it do?

A. Establishes fire insurance rates on properties throughout New England, except the State of New Hampshire.

Q. In connection with that function, does it have field inspectors who examine premises which are being considered for fire insurance?

A. Yes, sir.

Q. Are these inspectors presently under your jurisdiction?

A. Yes, sir.

Q. Were you formerly an inspector?

A. Yes, sir.

Q. What do these inspectors look for on a particular premises? What are they supposed to do?

A. They inspect the property in order to establish facts in relation to construction, occupancy, protection and exposure.

Q. All this with a view toward determining the ultimate fire insurance rate that is to be assessed on that property?

A. Yes, sir.

Q. For the purpose of insurance?

[fol. 809] A. That is right.

Q. Your company or your association acts as a special agency for a number of fire insurance companies in this area, is that correct?

A. That is right.

Q. Does your association maintain detailed records of the properties that are insured by the companies you act for?

A. Yes, sir.

Q. At my request, Mr. Collins, have you made a search of your records covering sprinklered properties in the Towns of Needham, Natick and Newton, Massachusetts?

A. Yes. sir.

Q. Can you tell us, based on that examination, in the Town of Natick, Massachusetts, approximately how many sprinklered properties there are that you have records of?

A. Approximately 75.

Q. And these 75 properties are covered by fire insurance that is written by companies that you act as agent for?

A. Well, no sir. They are properties upon which we have established fire insurance rates that may be written by any company.

[fol. 810] Q. Of those 75 properties, approximately, Mr. Collins, how many, if any, are noted on your records as having auxiliary connections directly to the fire department?

A. What town was that?

Q. The Town of Natick.

A. Approximately 28, 28 to 30.

Q. Similarly, in the Town of Newton, Massachusetts, approximately how many sprinklered properties do your records show in that town?

A. Approximately 120.

Q. And do your records indicate the number of auxiliary master box connections—directly connected to the fire department in that town?

A. Approximately 28.

Q. And in the Town of Needham, approximately how many sprinklered risks are there in that town?

A. Approximately 75.

Q. How many are shown on your records as being connected to the fire department by means of an auxiliary system?

A. Approximately 30 to 35.

Q. Mr. Collins, do your records of these properties show the type of business that is conducted or what [fol. 811] the property is used for generally?

A. Yes, sir.

Q. Do your records show—well, suppose you tell me, looking at the records that you have, generally the types of property that have these auxiliary connections to the fire department.

A. Well, they can include all properties, all types of properties, nursing homes, convalescent homes, manufacturing properties, office buildings, practically every type of property.

Q. Would you say that it is generally the same types of property that are generally protected and have fire insurance throughout this area—representative of the same types, that is?

A. Yes.

Mr. Williams. I have no further questions.

The Court. Is there any cross-examination?

Mr. Story. No, no questions, your Honor.

The Court. You are excused. Next witness.

Mr. Williams. Mr. Swett.

WALTER JOSEPH SWETT, Sworn

Direct Examination.

By Mr. Williams:

Q. Mr. Swett, would you state your full name and home [fol. 812] address, please?

A. Walter Joseph Swett.

Q. How do you spell your last name?

A. S-w-e-t-t. Walter Joseph Swett, Jr. 27 Pennsylvania Avenue, Somerville, Massachusetts.

Q. Are you employed by the American District Telegraph Company, sir?

A. I am.

Q. What is your capacity?

A. District Service Superintendent.

Q. In connection with those duties as District Service Superintendent, do you or does somebody under your supervision maintain records showing the identity of the American District Telegraph subscribers?

A. Yes, we do.

Q. Is it possible to determine from these records the type of service that the company is furnishing to these subscribers?

A. It is.

Q. At my request, Mr. Swett, have you prepared a list of ADT subscribers to central station sprinkler supervisory and waterflow service in the Towns of Natick, Needham and Newton, Massachusetts?

A. Yes.

[fol. 813] Q. When was this list prepared?

A. A week ago last Friday.

Q. And it shows those subscribers which were on the company's books as of that date, whatever it was?

A. That is correct.

Q. Do you have a copy of the list with you, sir?

A. Yes, I do.

Q. For the Town of Natick, Massachusetts, sir, how many central station sprinkler supervisory and waterflow service subscribers does it show?

A. Seven.

Q. And for the Town of Needham?

A. Eleven.

Q. For the Town of Newton?

A. 13.

Q. Do these subscribers receive ADT central station service from its Boston central station?

A. That is correct.

Q. And that service that they receive is standard in all respects, is it not, to the type of sprinkler supervisory and waterflow service that the company normally renders?

A. That is correct.

[fol. 814] Mr. Williams. Your Honor, at this time I offer the list of subscribers prepared by Mr. Swett.

The Court. The same objection as before, I take it?

Mr. Story. Yes, your Honor.

The Court. The same ruling. Admitted.

Mr. Williams. I think that will be W-48.

(List of ADT subscribers to central station sprinkler supervisory and waterflow service in the Town of Natick, Needham and Newton, Massachusetts prepared by Walter Joseph Swett, marked W-48 and received in evidence.)

The Court. Any cross-examination?

Mr. Story. No, your Honor.

The Court. You are excused. Next witness.

Mr. Story. For the record, I would like to move to strike the entire testimony of this witness as being completely irrelevant and immaterial to any of the issues in this case.

The Court. Motion denied. Next witness.

Mr. Fritz. Mr. Smith.

[fol. 815] ALBERT EARL SMITH, Sworn

Direct Examination.

By Mr. Fritz:

Q. Will you state your full name and address, Mr. Smith?

A. Albert Earl Smith, 2 Washington Square, Larchmont, New York.

Q. Were you up to quite recently an officer of the defendant ADT Company?

A. I was up until the first of March.

Q. The first of March?

A. Yes.

Q. Then you retired?

A. That is correct.

Q. Prior to this time what office did you hold in the company?

A. Director and vice president.

Q. How long had you been in those positions?

A. Since January 1st, 1955.

Q. Prior to 1955 what position did you hold?

A. Well, I was General Sales Manager, General Commercial Superintendent, down to 1946, and then I had four years' service in the Air Force, and then I was Special Representative under the Vice-President back to 1931.

Q. I don't want to go back that far. Would you tell me

[fol. 816] this. In your position as vice president from 1955 on what in general were your functions?

A. Well, I was in charge of sales, public relations, diversification and expansion, up until 1961, then I took over as Vice-President International.

Q. Who under you had charge of the sales organization from 1955 on?

A. Charles J. O'Brien, sir.

Q. And he is now the President of the company?

A. That is right, sir.

Q. Mr. Smith, I want to draw your particular attention to one or two matters. I have here excerpts from the deposition of a man by the name of Ira Warlick, Government's Exhibit 361, and he says in substance that as his memory served him in 1956—early 1957 he was approached by a Mr. Smith, whose card identified him as Executive Vice President of ADT, accompanied by a Mr. Simpson—this was in Tulsa, Oklahoma—and that at a luncheon conference they, meaning you and Mr. Simpson, wondered if he, Warlick, wouldn't like to sell out to them in lieu of their, meaning ADT, having to come in here and open up a business. My question is: have you ever met Mr. Ira Warlick?

A. I have no recollection of having ever met him.

[fol. 817] Q. Either at the place and time mentioned in what I have just called your attention to or elsewhere?

A. Nowhere. I——

Q. Well——

The Court. Please let him finish his answer.

The Witness. I beg your pardon?

The Court. You were interrupted. Go ahead.

A. (Continuing) I would modify that by saying this. I presume you mean a direct meeting with the man, and not the possibility of meeting him at an Association, like the National Fire Protection or the International Fire Chiefs, or something like that. I don't know. I would not know him.

The Court. But does the name mean anything to you?

The Witness. I can hardly——

The Court. Does the name mean anything?

The Witness. It means I knew there was a man in Tulsa,

in a signaling business, by that name, and that's all I know about him.

The Court. So far as you know, were you ever introduced at a luncheon or an association meeting or anywhere to him?

[fol. 818] The Witness. I have no recollection, sir, of it, and my diaries show that I never was in Tulsa in 1956 or 1957. I haven't been there but once since the war, and then for only two hours, according to my diaries, which I have kept for forty years.

Q. I was coming to that later. You do know Mr. Simpson, an employee of ADT?

A. Yes, sir.

Q. To your knowledge had you had any meetings with Mr. Simpson in Tulsa, Oklahoma in 1956 or 1957?

A. To my knowledge, I did not.

Q. You mentioned diaries. I ask you whether these two books that I hand you are the diaries to which you referred?

A. Yes.

Q. Will you tell the Court, first, what was your practice with respect to keeping that type of diary? In other words, what is the nature of the entries? Is this kept on a daily basis?

A. It was kept on a daily basis, indicating the city I was in, and memos or notes of different things that may have come up that I thought important, and also it was kept as a means of helping me to make out my expense account when I came back.

[fol. 819] Q. Was it your usual practice to note in those diaries the places that you had been practically on a day by day basis?

A. That's right.

Q. And is that what those two diaries for the complete years of 1956 and 1957 show?

A. That's correct, sir.

Q. And have you examined those two diaries on a day by day basis?

A. I have, sir.

Q. And do they indicate your presence in the City of Tulsa at any time in the year 1956 or 1957?

A. They do not.

Q. Do you have any objection if I offer your diaries in evidence?

A. Well, I have no objection if I am sure to get them back. I have saved these for forty years.

Mr. Fritz. May I have them marked?

The Court. You may. All I would say is that except for certain political scandals I never remember any exhibits being stolen.

If you want them back for any current purpose, say so, please.

[fol. 820] The Witness. They are kind of old. The numbers are no good in there, your Honor.

The Court. It is up to you. I know some people do use their old diaries from time to time.

The Witness. Well, I am writing a little story of this business from 1920 to date based on my diaries and my two World War experiences included in it, and that is the reason I am using them.

The Court. I think it might serve the purposes of everybody if these exhibits are returned to him after adequate opportunity has been allowed to counsel for the Government to see whether there is any reference to policy.

Is that satisfactory?

Mr. Story. No objection to that, your Honor.

The Witness. Thank you, sir.

Q. Did you ever hold a title of executive vice-president?

A. I never did, sir.

Q. Did you ever have a card that contained the designation over or under your name?

A. No, sir.

Q. Now I would like to call your attention, Mr. Smith, to one other situation which is referred to in the deposition of James E. Rose, Government Exhibit 351. [fol. 821] And for Government convenience I am now referring to page 83 and 84.

It is there stated that in or about April 13, 1951, you met with the Rose Brothers and a Mr. Thornton and Mr. Halstead at the Rose Bros. office, and after you introduced yourself to the Rose Bros. they showed you their central station, and then you came up and sat in their private

office and that one of the things you are supposed to have said was that you were concerned——

Mr. Story. Your Honor, is Mr. Fritz testifying?

The Court. I understand that you put a question based on prior testimony which is in a deposition. With respect to this he is trying to find out whether this witness' recollection is any basis for another witness' testimony. I don't know what other way he can do it.

Mr. Fritz. I am only saying what is in the excerpt.

The Court. So I understand.

Q. One of the things that Rose said you said, Mr. Smith, was that you were concerned over the accounts that his company had supposedly taken away from salesmen of [fol. 822] the ADT Company and that you had a list with you and you read some of those names of the accounts which Rose said he recognized as sales that he had made, and that you wanted to know how he got those accounts and he said, "Well, various reasons. They call us or we solicit their business."

He also said—and this, I think, was the young man—that he remembered your saying to him, "You better look out; the Army will be getting you."

Now my question to you is: Did you meet with the Rose Brothers in or about April of 1951.

A. If you will give my diary——

Q. No, I beg your pardon. Do you want some help?

A. I want my diary for 1960. I think it was 1950 and 1951. I've got a note on that.

Mr. Fritz. May the record show that I have handed the witness a small book?

Q. You are looking at what, Mr. Smith,—the diary?

A. I am looking at my diary for 1950, and Tuesday August 8th, in Detroit. It indicates that I went with a Mr. Hall, our district sales manager, to the Michigan Burglar Alarm Company at 10410 West Chicago Street, Detroit, and met Mr. Rose.

[fol. 823] Q. What date is that?

A. Tuesday, August 8, 1950.

Q. Have you looked to see whether you had a meeting there in or about April 13, 1951?

A. Give me my 1951 diary. Well, you said April 15th?

Q. April 13, 1951.

A. No. For the first two and a half weeks of April I was on duty with the Munitions Board in the Pentagon.

Q. I can't hear you.

A. I said in the first two and a half weeks in April I was on duty with the Munitions Board in the Pentagon in Washington, D. C.

Q. So that the precise date of April 13, 1951: Does it or does it not show a meeting with the Rose Brothers in Detroit, Michigan?

A. It does not.

Q. All right. Now your prior diary for the year 1950 as of August 8, 1950, does show such a meeting, is that correct?

A. That is right, sir.

Q. Do you have a recollection of who was present at that meeting?

A. Don Hall, the district sales manager, Mr. Rose, Sr., one of the boys I remember, and both of them may [fol. 824] have been there.

Q. Had you known Mr. Rose, Sr.? And the Rose Brothers prior to this meeting of August 8, 1950?

A. I had never met them, sir.

Q. How did you come to go there?

A. Mr. Hall took me out there and wanted me to meet them, to see this new central station which was just starting.

Q. You say Mr. Hall was with you?

A. That's right.

Q. Do you remember in substance what the conversation was at that meeting?

A. It was just a general conversation.

Mostly Mr. Rose, Sr., furnished the conversation, by telling me his life history and how he came from Canada a poor boy to Detroit and started in the local burglar alarm business and had done very well, and then his boys had gone to war and they were back and wanted to get in the central station business, and it was going to cost him a lot of money. He was very friendly and took us out to see his central station, because the chief operator was some chap by the name of Catlin from our

ADT Detroit office. I talked to one of the boys. I don't [fol. 825] recall the other boy very well, but he said both of them had been in the service.

Q. Tell me: Did you tell one of the boys at that time that in effect he had better look out; he might soon be back in the army?

A. That statement would be ludicrous to me, because while it was true that I was still a Colonel in the Reserve and was just subject to active duty call for myself, I couldn't put him in the Army any more than anybody here could.

Q. This young man that you are talking about, Mr. Rose—he told you he had just recently come out of service, had he not?

A. That was my understanding: that he had done his service. Both of them, as I understood it, had done their service, but I didn't push that question. I think 1950 was when the Korean war started, in June.

Q. I will take your statement. You follow those affairs better than I do, but, in any event, there might have been some talk about wars and the army, might there not?

A. It is possible. I have been in two world wars.

Q. But I am simply asking you whether or not there was [fol. 826] any information or suggestion or any threat of any kind by you involving Army service?

A. Absolutely not.

Q. This same deposition,—and I now refer to the part of the exhibit under page 86 running through to page 87, quotes the person making the deposition, Mr. James Rose, as stating, although not in your presence, that Don Hall said he could go to New York and get a million dollars put in this town and run them right out of business.

Now I am not asking you whether or not you heard it, because I understand you are not put at that conversation, but I want to ask you whether or not Mr. Hall is still living, to your knowledge?

A. Mr. Hall is dead.

Q. Do you know when he died?

A. He died, I would say, three years or four years ago.

Q. With respect to the Washington sales district, at one time there were two men following one another by the name of Heisley and Bodley, were there not, as district sales manager there?

A. Bodley first, and Heisley followed Bodley.
Q. Are they both dead?
A. They are both dead.

[fol. 827] Mr. Fritz. May the record show that the date of the Rose deposition is September 26, 1962.

Q. Is that date, 1962, subsequent, to your knowledge, to Mr. Hall's death?
A. Yes.

Mr. Fritz. I think that is all, sir.
The Court. Any cross-examination?
Mr. Story. Yes, your Honor, I have a few questions.

Cross-examination:

By Mr. Story:

Q. Mr. Smith, I hand you a document which has been marked Government Exhibit 45.

Mr. Fritz. Mr. Story, would you pardon me, please? I would like to have the two diaries to which Mr. Smith made reference also marked at the same time.
The Court. They may be marked as exhibits. They may be treated and admitted as exhibits. They may, nonetheless, be returned at the end of 24 hours to Mr. Smith, unless the Government draws to the Court's attention some reason for not returning those diaries.

[Two diaries market Exhibits Y1 and Y2 respectively.]

[fol. 828] By Mr. Story

Q. Mr. Smith, I hand you a document which has been marked Government Exhibit No. 45, dated April 7, 1960, and ask you whether or not you wrote that document?
A. I would say that I did.
Q. Did you or did you not, sir?
A. Yes, sir.
Q. I refer you, sir, to the first page here entitled, Reliance Protective Inc., Tulsa, Oklahoma, and I'll read you this sentence: "We visited Mr. Warlick on several occasions in the past, the last time in 1956, at which time he had no intention of disposing of his business."

Does that sentence appear in this document which you have written?

A. That sentence appears there.

Q. You wrote it?

A. I wrote it.

Q. Is there any reason why you have changed your testimony?

A. I am not changing anything.

Mr. Fritz. Just a moment.

The Court. Just a moment, please.

The Witness. Let me finish.

The Court. That is an improper question. He may or may not have done something in the way of changing [fol. 829] the deposition, but he hasn't changed his testimony.

Q. Mr. Smith, you have testified previously that you were instrumental in directing the activities of the Sale Department of the American District Telegraph Company from approximately 1946 until very recently; is that right?

A. Until about 1955.

Q. From about 1955?

A. 1955, 1956—when Mr. O'Brien was appointed.

Q. In connection with your operation, sir, in the Sales Department, did you have any functions in connection with approving or rejecting contracts which originated in the field?

A. Did I have any function?

Q. Yes, sir.

A. As a sales manager I always had a function but it was delegated to others—to the field people.

Q. Did you have any authority at all, sir, to approve or reject a contract which had been executed in the field?

A. I did.

Q. What were your duties?

A. As a general sales manager, the hiring of personnel, issuance of instructions to them, trying to guide them through the 13 districts. They had their instructions which [fol. 830] was the price list, their contracts and things were handled locally. If a contract came into New York that had been refused by the district manager because he didn't know whether he could accept it or not, it was

within his delegated authority, when I would exercise mine to the point where I could exercise it and beyond that it was up to the vice president and president to exercise, to go over my head.

Q. Up to what degree could you approve a contract coming in from the field?

A. I don't understand your question, sir—to what degree?

Q. What kind of contract could the district sales managers accept and bind the company?

A. Standard contracts on minimum basic rates or contracts at rates that were certain percentages below minimum, minimum basic rates.

Q. What was that percentage?

A. Well, I think it was 80 per cent and 60 per cent.

Q. Was that what it was—was it 80 and 60?

A. Well, the records of the company should show that now. You must remember ten years ago when I was doing that,—pretty nearly 10 years ago—it is pretty long for somebody whose 69 years old and has been sick for the last six months to remember all the members. But the [fol. 831] records of the company will answer your question definitely.

Q. In the event that some field representative proposed to execute a contract for 50 per cent of your installation charge and 50 per cent of your annual service charge, would you have to look at such a document?

A. I would have to look at it or he would have to secure approval from the vice-president or the president during those times, depending—see, my delegated authority was below the vice-president and the president.

Q. Well, up to what per cent could you authorize the cutting of your standard nation-wide prices?

Mr. Fritz. I object to the form of the question,—involving the word "cutting."

The Court. That is correct, the objection is sustained.

Q. Well, I think up to now, Mr. Smith, you have told us that the field representatives could accept a contract and bind your company if the reduction was no more than approximately 20 percent on your annual service charge

and no more than 40 percent on your installation charge, is that correct?

A. That is as I recall it. I haven't seen those instructions for a long time, but that is correct as I recall.

[fol. 832] Q. Who would have the final authority for binding your company in the event that field representatives proposed to make an installation of several thousand dollars by your standard rates, without any installation charge? Who would have to pass on that?

A. That would again depend upon the delegated authority of mine and of the officers of the company. You would have delegated authorities which were written, and that would answer your question. I can't answer your question offhand. It would be just guessing. I wouldn't do that.

Q. If your company in competition with one of your competitors proposed to install an installation which by your standard prices would cost over $20,000 and you had received a proposal to put it in without charge, who would have to decide whether or not that contract would be accepted by your company?

Mr. Fritz. I object to this as improper cross-examination. There is no basis in the evidence.

The Court. That objection is overruled. I think he is the appropriate person to describe who would have the authority, and you are directed to answer the question over the objection of defendant's counsel.

[fol. 833] A. Well, the vice-president or the president of the company would have that authority—not me.

Q. Mr. Smith, I hand you what has been marked as Government Exhibit 193 and refer you to page 2 of that document and ask you whether or not your signature appears thereon.

A. That's my signature. I admit that signature, but it is merely a notation signature, not an approving signature.

Q. How many years did you work with Mr. Gaston when he was president of the American District Telegraph Co.?

A. I worked from the day he became president until the day he retired, as president.

Q. During the period of that time, did you become familiar with Mr. Edward Gaston's signature?

A. Yes, sir.

Q. Does Mr. Edward Gaston, the president of ADT's signature, appear on that document which is before you?

A. I would say that that signature looks very much like Mr. Gaston's signature.

Q. You have seen it a number of times, have you not?

A. Yes.

Mr. Fritz. I don't think there is any question about it.

The Court. All right. The defendants admit it.

[fol. 834] Q. Referring to that document, sir, what was your standard nationwide MBR for the installation of an alarm system at the General Aniline & Film Corporation of Lindon, New Jersey?

A. What is your question now?

Q. What was your standard price for the installation as appearing on that document?

A. Well, the computation shown here indicates $16,703.90, if I read the figures read.

Q. I am talking, sir, about your installation charge or your advance service charge. What was the price?

A. That I can't answer because I don't have the rate sheets in front of me and I don't go by memory.

Q. Mr. Smith, doesn't it appear on here where it says, "Total minimum basic charge," and does it have an entry for annual service charge and one for advance service charge, or installation charge?

A. He has computed that advance service charge at $27,430. I don't know on what the exact basis for this type of job. You have an exceptional job there. I don't know.

Q. Anyhow, the standard price is reflected on this document as $27,430—right?

A. That is what the document says.

[fol. 835] Q. What did you obtain whenever you executed that contract for your installation charge?

The Court. I wish we had either a jury here or a sound device which would show your emotion.

Mr. Story. I am sorry, your Honor. I will keep my voice down.

Q. What did you obtain, sir?

A. Well, all I can go by is what this record shows, presuming it is correct: As a total amount secured it says $9,644.60.

Q. That is for your annual service charges?

A. Yes, sir.

Q. What did you get for an installation charge?

A. It says the installation is figured in the annual. Thas is what it says: "Difference, none."

[fol. 836] Q. You got nothing for installing the system?

A. Well, that is subject to interpretation.

Q. Was your company in competition with any other central station company in connection with that bid?

A. Well, I don't know that——

Mr. Fritz. The document so states, does it not, Mr. Story?

Mr. Story. It does. Mr. Smith seems not to be very familiary with this.

The Court. Gentlemen, or, rather, Mr. Story, do remember that you are trying this before a Judge who can read documents and who does not need this kind of argument to the witness.

Mr. Story. I have one question, your Honor.

Q. That is your signature, is it not, Mr. Smith, on this document?

A. It is, sir.

Mr. Story. Thank you.

Redirect examination.

By Mr. Fritz:

Q. Mr. Smith, I show you Government's Exhibit 45, which contains a statement with regard to Reliance Protection, Inc. "We visited Mr. Warlick on several occasions [fol. 837] in the past, the last time in 1956." I call your attention to the fact that throughout that memorandum in numerous places you used the word "we," the pronoun "we" and the pronoun "us." What did you mean when you said "we"?

A. "we" means anybody representing the commercial or

the sales department. If I personally called on them, I said that I called on them.

Q. Do you still say, in the light of that memorandum, that you did not visit Mr. Warlick, as it was testified in the deposition?

A. I would say that I never personally visited, but when I was writing—this is a memorandum, I think, written to the President.

Q. That is right. The indications are that somebody did, is that correct?

A. The indications very definitely are that.

Mr. Fritz. All right. That is all.

Mr. Story. No further questions, your Honor.

The Court. Next witness, please.

Mr. Fritz. That is all, Mr. Smith.

[fol. 838] WALTER DARL SIMPSON, Sworn

Direct Examination.

BY MR. FRITZ:

Q. Your full name and address, please, Mr. Simpson?

A. Walter Darl, D-a-r-l, Simpson, 629 Melody Lane, Jonesboro, Arkansas.

Q. Were you sitting here in the courtroom when I read to Mr. Smith a digest of Mr. Warlick's testimony about an alleged visit to him in Tulsa, Oklahoma by you and Mr. Smith in late 1956 and early 1957?

A. Yes.

Q. And I have talked to you about this, have I not?

A. Yes, sir, you have.

Q. Were you present at any meeting with Mr. Smith and Mr. Warlick in Tulsa, Oklahoma or elsewhere, for that matter, at any time in 1956 or 1957?

A. Never.

Q. Do you know Mr. Warlick?

A. I met him years ago at a District Engineers' bid opening in Tulsa. I would not know him if I saw him.

Q. To your knowledge is that the only time you met Mr. Warlick?

A. It is.

Q. And what did you say it was?

A. A bid opening on Army Camp jobs during World War II.

[fol. 839] Q. Where?

A. In Tulsa, Oklahoma, at the District Engineers' office there, the Corps of Engineers.

Q. In what year?

A. I don't recall the year.

Q. Was it in the '40s?

A. It would be.

Q. Was Mr. Smith there?

A. It would be after 1942. No, sir.

Q. Were you alone?

A. No.

Q. Who was with you?

A. My manager from Oklahoma City, Mr. Bundell.

Q. Did you ever at any time attend a meeting with Mr. Warlick and Mr. Smith in Tulsa, Oklahoma?

A. No, sir.

Mr. Fritz. Your witness.

Mr. Story. I have no questions, your Honor.

The Court. You are excused. Next witness, please.

WILLIAM F. HABLE, Sworn

Direct Examination.

My Mr. Conkling:

Q. Mr. Hable, would you state your name and address?

[fol. 840] A. William F. Hable, H-a-b-l-e, 108-50 66nd Drive, Forest Hills, Long Island.

Q. By whom are you employed, sir?

A. The American District Telegraph Company.

Q. And for how long have you been employed by that company?

A. 41 years as of last April, 1964.

Q. Will you keep your voice up, please?

A. Surely.

Q. What is your present position?

A. I am General Superintendent of the Service Department.

Q. For how long have you held that position?

A. Since November of 1957. However, I should qualify that a little. When I was appointed to the General Superintendency in 1947 it comprised the Plant Department and in 1960 the Plant and Operating Departments were consolidated, and at that time I was placed in charge of both departments, a consolidated department known as the Service Department.

Q. Including Plant and Service?

A. That is right.

Q. How many employees, approximately, do you have under your supervision?

A. Under the Plant Department arrangement I have between 1600 and 1700. Under the consolidated arrange-
[fol. 841] ment I have 4122 at the last count.

Q. And these are throughout the ADT system?

A. Throughout our Districts in the United States.

Q. Would you please tell me your particular duties and functions as General Superintendent of Service and as Plant Manager back to, let us say, well, over the last ten years, briefly and generally?

A. I am in charge of the installations, maintenance and operations, service operations of the company.

Q. That would include the installations—when you say "installations" you mean what?

A. The equipment installed in our central stations as well as in our subscribers' premises.

Q. Have you also during that period had some experience with reference to the setting up of a central station, a new central station?

A. Yes.

Q. You have done that during the last ten years, have you?

A. Yes.

Q. On one or more occasions?

A. That is correct.

Q. When have you most recently supervised the setting up of a new central station?

A. Earlier this year at Charlotte, South Carolina.

[fol. 842] Q. Prior to that what was the last one, if you recall?

A. In Annaheim, there were two installed fairly close together, in Annaheim, Orange County, California.

Q. Do you recall, sir, what the approximate amount was that it cost from your plant viewpoint to set up either or both of those central stations?

A. Yes.

Q. Approximately how much?

A. To establish the switchboard, the timing table equipment, the battery, the rectifiers are separate, it cost approximately $25,000. To equip the office with the necessary equipment to meet the requirements of the Underwriters, and also to have a complete office arrangement, the cost would be between $52,000 and $55,000.

Q. Now, sir, we have been talking about central stations, and you have just stated or told the Court that you had supervised the setting up of central stations. Would you tell me briefly what is a central station?

A. Well, central station can be an individual small building or it can be office space in a generally large building. It is equipped with switchboards, batteries, rectifiers, timing tables, recorders, time stamps and the necessary [fol. 843] personnel to have three shifts around the clock.

Q. To do what? What is its function? What is the function of the central station?

A. The function of the central station is to receive signals from various types of installations throughout the city, and upon receipt of those signals at the signal station our personnel take the required action, depending upon the type of signal. If it is a trouble signal they dispatch a repair man. If it is a supervisory signal, we notify the subscriber and also dispatch someone to investigate the cause of that signal. If it is a fire alarm or burglar alarm signal, we transmit that signal to the police and/or fire department, and also dispatch our runners, our service men.

Q. Thank you, sir.

Now you have said that it has been part of your duties to supervise through your staff, and you have described installations throughout the United States, and you have just told us what a central station is. When you testify that you supervised the installations, what did you have in mind, apart from the central station itself, I mean?

A. Apart from the central station itself?

[fol. 844] Q. Apart from the central station itself.

A. Well, the installation of equipment in a subscriber's premises is started upon the receipt of an approved Form 401 from our Sales Manager.

Q. What is that Form 401?

A. That Form 401 to my Department is specifications covering the type and scope of service to be installed.

Q. Is this a work order?

A. You could call it a work order.

Q. All right, sir. Go ahead.

A. Upon receipt of that we place the order with our Supply Division for the necessary equipment, and then we proceed, upon the receipt of that equipment we proceed to make the installation.

Q. When you say that you proceed to make the installation, you are talking about the installation on the subscriber's premises?

A. Yes.

Q. We have already talked about the installation of a central station. Do you bring the two together?

A. Upon the completion of the installation of equipment, it is thoroughly tested out with a supervisor in attendance, and then it is connected to telephone wires at one [fol. 845] end, at the subscriber's premises, and at the other end on our equipment in the central station, and then the entire installation is tested out with our central station equipment.

Q. And if it passes the test, then what is next?

A. The next step would be to establish all the necessary records, the location of the control set, various items of protection, and then it receives the full attention of service required by our contract, in compliance with company policy, as well as the Underwriters.

Q. Is it at this point you would say that a central station system has been installed?

A. Yes.

Q. Now, sir, your company, and you as Superintendent of Service, including Plant, over the last ten years have installed systems other than central station systems, have you not?

A. That is correct.

Q. Would you tell me what those other types of systems have been and are?

A. Well, there are local systems of burglar alarm, fire alarm, sprinkler, and then there are local and direct connected systems of the same type of services. There are [fol. 846] proprietary systems and occasionally there is an auxiliary connection.

Q. All right. Would you tell me briefly what is a local system?

A. A local system is one that is remotely located, and the same equipment that is used on any installation, if it is a burglar alarm, is used throughout that premises but——

Q. Excuse me, sir. Just tell me what is a local system as distinguished or compared to a central station system.

A. A local system rings an alarm bell. It has no connection to a central station.

Q. All right. Now you have mentioned also that you have installed direct connected systems.

A. Yes. A direct connected system is a local system with a connection to Police Headquarters, Fire Headquarters and/or a telephone answering service.

Q. And you have mentioned that you have installed, and when I say "you" I mean the people under your supervision, auxiliary systems, have you not?

A. Yes, sir, we have.

Q. What is an auxiliary system?

A. Well, certain Fire Departments require that any signal coming into the headquarters be transmitted [fol. 847] over one of their circuits. Therefore, it requires a connection of a special box to the fire telegraph service.

Q. And you have mentioned that you have installed proprietary systems, have you not?

A. That is correct.

Q. What are they?

A. A proprietary system, you might say, is a miniature central station confined within the subscriber's premises.

Q. Without connection to a central station?

A. Generally they start off that way, without any connection.

Q. It reports to their own control panel within the protected premises?

A. Yes. Usually a proprietary system is maintained and operated by the subscriber's security personnel.

Q. Have you sometimes installed a combination of a proprietary and then some supervisory—the installation of the proprietary-supervisory from a central station?

A. Yes, we have.

Q. Having in mind all of these types of systems that you have just described, and having in mind the in-

[fol. 848] stallations, what differences, if any, exist with respect to the equipment installed on the subscriber's premises?

A. Between central station and these various other types?

Q. Yes. Do you use the same devices and other equipment?

A. They are identical with the exception of the control equipment.

Q. Now, sir, you have described the central station and the other forms of service for me. I want to show you this. Mr. Hable, I have just placed before you several papers. Would you examine them for me and tell me what they are?

A. The first one is our standard contract for a local alarm service.

Q. All right. What is the next one?

The Court. I am going to interrupt you at this time because at 11 o'clock Judge Sweeney is having a short meeting of the Judges of this District. I don't know how long it will last. My guess is less than 15 minutes.

[fol. 849] Q. Mr. Hable, I think just before the short recess you described the form of ADT contract for local alarm service.

A. That is correct.

Q. Do you have some other papers there?

A. The next is our standard contract for direct connected service. The next is our standard contract for central station burglary and holdup protection service.

Q. And the next?

A. The next is standard contract for central station protective signal service.

Q. And the next?

A. The next is modified central station service.

Q. Now, have these standard forms of ADT contracts been in use to your knowledge for many years?

A. They have, for many years.

Q. Do you know whether they all contain a provision for the retention of title by the servicing company?

A. That is correct, they do.

Mr. Conkling. Your Honor, I offer in evidence the five forms of sample ADT contracts for the various forms of service.

The Court. All admitted.

[Five forms of sample ADT contracts for various services, marked Exhibits Z-1 through Z-5 inc.]

[fol. 850] Q. Mr. Hable, is it important, based upon your experience over the 41 years with the ADT company and this industry, that the servicing company retains title to the equipment on subscribers' premises?

A. Yes. I consider it vitally important.

Q. Would you please state for the Court the basis for your opinion in that regard?

A. Well, we have been called upon numerous times to repair equipment owned by the subscriber, also to inspect and test out equipment owned by the subscriber, and our experience has been to find the systems not properly maintained, and in numerous instances a portion of the system was shunted out and in some instances the entire system was not operating.

Q. Keep your voice up, please.

A. That was principally due to the fact that the maintenance people did not have the necessary knowhow and/or were assigned to other duties rather than the maintenance of the systems.

Also there is quite a multitude of substandard—I mean unapproved—devices on the market, and the interchange of those devices would just not permit the system to operate properly.

[fol. 851] The retention of the equipment on the subscriber's premises is vital, because we have the keys. We are the only ones who can enter the control cabinets where an unauthorized person could enter or, if the subscriber or

his employees had access to those cabinets, they could circumvent the systems, if they so desired.

The people who established standards years ago required that the central station installing company would retain title to the equipment. I imagine they had in mind at that time some of those possibilities.

Q. Who are the people that you have in mind when you make that statement?

A. They would be the waiting organizations, inspection bureaus, and they establish standards.

Q. Do you have in mind, for example, the Underwriters Laboratories, Inc.?

A. Yes, that would be one of the organizations.

Q. Do names of any others occur to you?

A. Well, as a rule, they are named by states or divisions. There is such as Baltimore Inspection & Rating Bureau, the Ohio Inspection & Rating Bureau, New York Fire Exchange. There are any number of them throughout the country.

[fol. 852] Q. And are these the organizations, Mr. Hable, which prescribe the minimum standards which an approved central station company, for example, must meet if it is to furnish approved service?

A. The Underwriters Laboratories establish the standards for burglary and holdup protection. The National Board of Fire Underwriters establishes the standards for fire alarm, sprinkler supervision, waterflow service, etc.,—manual fire alarm.

Q. Does the ADT Company, to your knowledge, over the years you have been with it, meet those standards?

A. Yes. We not only meet them, we exceed those standards.

Q. Can you give me some instances of the manner or degree in which the ADT Company exceeds the standards set by the rating organizations you mentioned?

A. Yes, I can. The Underwriters Laboratories requires a four-hour test of burglar alarm drops in the central station. We test those drops on an average of two hours.

Q. Would you please—if I may interrupt you for a moment—explain to the Court what is meant by a "drop test"?

A. Each burglar alarm system connected to a direct-

wire alarm in our office: The circuit in itself is private and distinct from all other circuits, and, in order to be sure of the continuity of the circuit between our [fol. 853] central station and the subscriber's premises, we conduct an electrical test which operates a buzzer or other unit in the subscriber's premises.

That assures us that the circuit is there and also the system is ready to receive a particular alarm.

Q. And your company has made such tests more frequently over the years than is required by the organizations you mentioned?

A. That is correct.

Q. What are some other instances that come to your mind?

A. The Underwriters Laboratories inspect our central stations on an annual basis. We inspect and test our central stations on a monthly basis.

The Underwriters Laboratories also makes surprise tests on an annual basis. Those surprise tests are made along about the same time the inspector tests our central stations.

The ADT Company makes surprise tests from city to city throughout the whole system on a nightly, weekly, and monthly basis.

The Underwriters—that is the National Board of Fire Underwriters—requires that all fire alarm circuits, sprink- [fol. 854] ler supervisory and waterflow alarm circuits, be tested once every 12 hours. It is ADT's policy and has been through the years to test all fire alarm circuits every four hours.

Q. Is there any difference in guard response?

A. Yes, there is. The Underwriters require, upon receipt of a fire alarm signal from a subscriber's premises the Fire Department be notified and that we also send our runners or guards. We exceed that requirement in this respect. Through radio, through tapper circuits, we are notified when there is a fire in most any location within the city, and, upon receipt of such information, if that fire happens to be in a non-subscriber premises but adjacent to one of our subscriber premises, we dispatch a guard. He investigates to determine whether or not there is any

hazard to the subscriber's premises, and so notifies the subscriber. It is not a requirement, but we do that.

Q. Now, sir, a moment ago—I handed you another form of ADT contract, local alarm service customer-owned system. Do you have that there?

A. I do.

Q. Would you tell me briefly what that refers to or what type of service that refers to?

A. Well, principally that would refer to proprietary [fol. 855] systems.

Q. Proprietary systems?

A. That's right. It could also refer to any type of local alarm system.

Q. And this form that you have before you as you just described it makes no reference to retention of title by ADT Company?

A. No.

Mr. Conkling. Your Honor, I offer in evidence this form of contract.

The Court. Received in evidence.

Mr. Story. The Government has no objection, your Honor.

[Form of ADT contract, local alarm service, customer-owned system, marked Exhibit K-1.]

Q. Now, sir, you have described proprietary systems and the form of service contract that the ADT uses in connection with that type installation has been marked in evidence. Have you had experience in the actual installation of proprietary systems during the last five years?

A. Yes, I have.

Q. And having in mind your statement a moment ago on the question of importance of title and the number of [fol. 856] devices that are on the market that may not be approved, have you prepared at counsel's request a list of systems or a list of installations made by the ADT Company using systems and equipment made by others?

A. Yes, I have.

Q. I show you that list.

The Court. Admitted.

Mr. Conkling. Thank you, your Honor.

[List of installations made by ADT Company using systems and equipment made by others, marked Exhibit L-1.]

Q. Would you, Mr. Hable, look at that list and tell me one or two of the instances that you have in mind bearing upon the importance of title question?

A. Yes. The General Electric Company, Baltimore.

Q. What about it?

A. The American Tobacco Company.

Q. Tell us about the General Electric Company in Baltimore. What happened there?

A. Well, there we were called in to repair the system and we found the system inoperative.

Q. Whose system was it?

A. Subscriber-owned. The type of this particular system?

[fol. 857] Q. No. Had it been installed by the ADT Company?

A. This system here had been installed by the ADT Company.

Q. And the installation included some equipment manufactured by others,—is that the idea?

A. These installations——

Q. Talk about the General Electric installation, if you please.

A. All right. The General Electric installation was made completely by the ADT Company. We used all of our standard equipment as far as the specifications for that job would permit. The specifications in that particular case specified that the type fire-eye detectors be utilized.

[fol. 858] Q. These are specifications of the subscriber General Electric Company?

A. Yes.

Q. Go ahead.

A. We purchased that type of detector and incorporated that into this system.

Q. And you made the installation as you described earlier?

A. That is correct.

Q. Then what happened?

A. In this particular case we were called in—we had no service contract, incidentally—we were called in to

make repairs, and one of the detectors was found to be defective.

Q. Can you fix for me the approximate date when the installation was made or completed?

A. Well, right offhand I can't.

Q. Can you fix for me the approximate interval of time after the installation until the time when you were called back to do something?

A. Yes, approximately, between five and six months.

Q. All right. Go on please.

A. There was some delay in getting replacements. We did not and we do not stock items manufactured by others. [fol. 859] I could go into more detail, if you wish, on other installations. That is all I recall of that particular installation.

Q. All right. Select another one, if you please.

A. The Aeronautical Chart & Information Center, Arlington, Virginia. That has a Pyr-a-Larm detector.

Q. Was that installation made by the ADT Company?

A. Yes.

Q. A proprietary system?

A. That is correct.

Q. After the installation or upon the installation the title to the equipment passed to the subscriber?

A. That is correct.

Q. All right. Then what happened?

A. We had difficulty with the detection units, at the time of installation and shortly thereafter, and the difficulty was overcome by replacement units. I don't know just how much of the electrical detail you would like to have me go into.

Q. Well, did you have something to do with the corrective action taken with regard to that system?

A. On a new installation like that, they generally furnish replacements, if they are defective. The ADT Company does the same thing with their equipment sold on [fol. 860] an outright basis. Any device or any component that is defective during the first year after the sale, the ADT Company replaces it free of charge.

Q. After the first year?

A. After the first year. If we don't have a service con-

tract, if we are called in to effectuate repairs and to do an inspection and test, the subscribers are billed for that.

Q. Is that different from the repairs, extraordinary or otherwise, that you may be called upon from time to time to make under a service contract and under the standard form of service contract?

A. Well, under that form of contract it would be central station service, and we retain the title to that equipment, and it is our responsibility to replace or repair anything that goes wrong at any time free of charge to the customer.

Q. Yes. That is your responsibility. Now can you tell us of some examples where that responsibility has been met in some large measure?

A. Yes.

Q. Please tell us.

A. When you operate on a nation-wide basis most anything can happen. And fresh in my mind is one of the worst [fol. 861] floods we had in the history of this country.

Q. Which flood was that?

A. At Kansas City, the Kansas City flood in 1951.

Q. What happened there?

A. Well, they had a terrific flood that built up and a certain number of subscribers' premises were flooded.

Q. How many, have you any idea?

A. Yes.

Q. How many?

A. Eventually, during that build-up of flood water the dikes broke and 186 subscribers' premises were knocked out of commission immediately just as quick as you can snap your finger, altogether a little better than 200 premises.

Q. What kind of subscriber premises are you talking about in Kansas City that were wiped out in the snap of a finger by the rush of water?

A. Just about every type, principally industrial type, but delicatessens, saloons, cafeterias, small offices, small mercantile stores, manufacturing plants, lumber storage yards, stock yards, just about everything you can imagine was involved.

Q. All right. What did your company do? You heard about it, I take it, and then you did something?

[fol. 862] A. Yes.

Q. Would you explain what you did?

A. We kept very close contact with it while the flood water was building up, and we expected that we were going to have an emergency condition, and we started to prepare for that. And as soon as the dikes broke we knew we were going to have to have a tremendous amount of equipment and larger manpower than we had in that particular city in order to correct the condition. So as soon as the flood water recessed, permitting us to get into the premises that were left, we replaced everything.

There was nothing you could use, and when I say "nothing" there was no device, actuating device, or transmitters, that could be used. Any item which is electric and is under water is just about out of commission and it is not safe to use in the protection industry.

We replaced all of those. In some premises we were able to swab out conduits and pull in new wire, but in many premises the entire installation had to be replaced.

Q. Were you in direct charge of this emergency job?

[fol. 863] A. I was in direct charge, and I was on the flood site for 17 days.

Q. How many men, approximately, if you recall, did you have with you to accomplish this task?

A. Normally we have eight men on maintenance in that particular city and we built up that force to 30.

Q. How long did the job take you?

A. The majority of the job, I would say, or 85 per cent of the replacement was taken care of in between five to six weeks. There were some jobs that we could not take care of because of rehabilitation. Some buildings had to be torn down and replaced, and as soon as the construction in those particular buildings reached a stage where we could reinstall our equipment we did that.

Q. Did you keep some record of the time and equipment costs required to accomplish that repair?

A. Yes, we did. It was just shy of $100,000 for equipment and labor costs to take care of that flood.

Q. Was any part of that replacement cost billed to any customer?

A. No. We owned the equipment. It was up to us to replace it free of charge, free to the subscriber.

[fol. 864] Q. Did you have any other instances that come readily to your mind of similar situations?

A. Yes. We had floods not of that force.

Mr. Story. Your Honor, I object to this.

The Court. Well, what harm does it do the Government?

Mr. Conkling. I beg your pardon?

The Court. I said "What harm does it do the Government"? This is an exercise in trying to persuade Congress or five Justices of the Supreme Court but it won't have the slightest effect on me.

Q. Would you go on, Mr. Hable, please.

A. Yes. We got similar occurrences of floods, but not that size, at Cincinnati, Pittsburgh, Louisville, Kentucky. I believe those occurred in 1954 or 1955. We also had hurricanes on the east coast that affected Boston, New Haven, Waterbury. That was in 1958-1959, along in there.

And earlier this year we had similar conditions on the eastern coast with flood conditions. In the Pittsburgh, Louisville, Cincinnati case, we spent approximately $75,000 free of charge to the subscribers, to reinstall our equipment. The most recent occurrence has possibly cost a [fol. 865] little less than $50,000 to take care of Louisville, Waterbury and Boston, that situation.

Q. Likewise at no expense to the subscriber?

A. Correct.

Q. Now, sir, you have talked about the people who on your staff do this kind of work, the installers and helpers. Who are these people and how are they trained?

A. Well, sir, we try to employ new employees with a certain amount of radio or television or electrical experience. We employ many with that sort of training. We employ others who have had no experience, and we assign them to various phases of the installation, repair and inspection work.

It takes approximately five years, between four and five years to give them a thorough training on all of our services, including guard service.

Q. Well, how long does——

A. They——

Q. I'm sorry.

A. They are furnished with a Service Manual, technical

bulletins and classroom instructions as well as on-the-job instructions.

Q. Yes. How long, if there is any period of time, on [fol. 866] the average, is it before you send such a new man, a trainee, out to do something for a subscriber?

A. On his own?

Q. Yes.

A. Alone?

Q. Yes.

A. That can occur after a year during emergencies. Normally he is accompanied by a fully-trained installer, repair man or inspector, but there are occasions when we send them out on a certain phase of a job that we know he has been trained to and can handle.

Q. Now, sir, did you prepare at counsel's request another list of representative systems installed by others and owned by the subscriber where your company, ADT, was subsequently called in to restore service and to provide central station connection?

A. Yes, sir.

The Court. Admitted.

(Document entitled Representative Systems Installed by Others, and Sold Outright to Subscriber, Where ADT Was Called Into Restore Service, and/or to Provide a Central [fol. 867] Station Connection marked Defendants' Exhibit M-1 and received in evidence.)

Mr. Conkling. Thank you, your Honor.

Q. Will you examine that list, please, and select one or two from that list and tell the Court what you found happened?

A. At the Boeing Aircraft Company in Seattle, they had a proprietary system installed by various contractors. It was a conglomeration of various manufactured devices. We were called in to inspect and repair, to inspect and test out and repair on a number of occasions, and we found that there again the maintenance of the system had been badly neglected due either to the people with the know-how being busy on other important machinery and/or a lack of interest or appreciation of the purpose of the system. In this particular instance we were asked to take

over the system and to provide a central station service. We wouldn't do that because——

Q. You would not do it?

A. We refused to take over and provide central station service of the entire system, the subscriber-owned system.

Q. Why would you do such a thing as that?

[fol. 868] A. The components incorporated into that system over a period of years would not make it compatible with the central station system. We couldn't render service. However, eventually we did provide central station connection. And as their equipment would trip our transmitter, upon the receipt of that transmitter code signal in our office we called back their security office and notified them their system had operated. Where or what portion of the system operated we would not know. It was up to them to investigate it.

Now Boeing has several plants. This condition prevailed in some and in others it did not. In others we replaced the subscriber-owned equipment and installed ADT's standard waterflow fire alarm and manual fire alarm service.

Q. Staying with Boeing for a moment, in your judgment and based upon your experience, when you saw that Boeing installation, at the time you were called in, your company was called in to do something about it, was that installation doing the job of protecting the Boeing property it was supposed to do?

A. It was not.

Q. Well, now your company has done something about a [fol. 869] new installation of a new transmitter and central station hookup?

A. Yes.

Q. Is that property protected now?

A. Not adequately, no.

Q. What is the matter?

A. The reliability of a protection system depends upon the devices and all components being designed for the protection circuits in use, and where you have a conglomeration of various devices, transmitters with differences in speed, spacing of signals and unsupervised electrical circuits connected thereto, you do not get reliable service.

Q. Is that the conglomeration you have in mind when you say it existed at the Boeing installation right now, the

conglomeration of the ADT installation you have made up to the edge of the plant where the proprietary system that was installed begins?

A. I would say that the installation of the ADT transmitter connected to the subscriber-owned equipment was an occurrence of about eight years ago. About six years ago the entire subscriber-owned system was taken out and junked by the subscriber, and he signed for the ADT cen-
[fol. 870] tral station service. So that has been corrected, that hazardous condition.

Q. Is there another example on that list that you prepared for me that might be entitled to special consideration?

A. Well, there are any number of United States Government projects where you have a contract to respond to trouble calls and also to make inspections and tests.

Q. Let me stop you for a moment. I don't think I asked you this. What is a trouble call?

A. There are two types of signals. One is an alarm signal. That means that a sprinkler head or waterflow has occurred in the premises through a fuse sprinkler head.

Q. This is a large signal?

A. That is a large signal. It can also mean that somebody operated a manual fire alarm box and/or an automatic system has operated. That is an alarm signal. In order to assure receipt of those alarm signals we have incorporated a feature that will indicate trouble, such as a broken wire, a grounded circuit, weak batteries, a dead battery. When that signal comes in, it is separate and distinct
[fol. 871] from an alarm signal. Upon the receipt of a trouble signal, we do not transmit that to the police or fire department. We dispatch one of our service men to correct the condition.

Q. All right, sir. Now if you will go back to the Government installations that you were talking about when I interrupted you.

A. As I said, we do not have full maintenance contracts on a good many Government installations. Our contract calls for responding to trouble calls, inspections and tests. It has been our experience to find some of those systems inoperative due to lack of experience on the employees maintaining them, and even though when we establish that

installation or others establish that installation the Government personnel were thoroughly trained.

It has been my finding and it is my belief also that due to transfers or discharges from the Service the military personnel coming in to take over are not properly trained. Due to that we have found or, you might say, they have on some installations a miniature central station identical to an ADT central station, with ADT switchboards, timing tables, etc., and we have found those not operating properly.

[fol. 872] Q. That type you just referred to, are they proprietary system installations?

A. Yes. You could say they were proprietary systems. It is an outright sale of the equipment.

Q. Incidentally, what types of protective service does the Government use that you know about, based on your experience, in a general way over the country?

A. Well, they use just about all of the important protection companies' equipment. They use ADT, Auto Call, Fireye.

Q. What type of service do they use? Do they use local system protection in places to your knowledge?

A. Yes, they have local systems.

Q. Do they use any direct connected service to your knowledge?

A. Not unless the direct connected is into one of their guard stations. They also use central station service.

Q. All right, sir. Is there any other instance of particular note that you would like to mention briefly?

A. Well, of course, I believe I have touched on Sears Roebuck. Am I mistaken in that? I think I did.

Q. No, I don't think you did.

A. Well, of course, Sears Roebuck is somewhat along the [fol. 873] lines of the Government. They are spread all over. They have had proprietary systems. Some of them date back a good many years. We have provided them with a transmitter arrangement from their proprietary system into our central station. Right here in Boston we have a large installation on that basis. The proprietary system that is installed is maintained by their security people. Occasionally we are called in to assist them in restoring service on that proprietary system.

Sears Roebuck had a good many such installations around the country, but apparently due to the expense and lack of experience of the help a lot of those installations have been abandoned and central station service is now in force.

Q. Thank you.

Mr. Story. Your Honor, the Government has no questions.

Mr. Conkling. I haven't finished. I had just laid the exhibit down on the Clerk's desk.

Q. Mr. Hable, have you ever heard of the General Alarm Company?

A. Yes.

Q. Would you tell me what the General Alarm Company was?

[fol. 874] A. The General Alarm Company was located right here in Boston. It was central station——

Q. Well, was it a company that was acquired by the ADT Company?

A. Yes.

Q. Do you know approximately when?

A. I think it was back in 1955.

Q. Did you have something to do as Plant Manager in connection with or following the acquisition of that company?

A. Yes, I did.

Q. You had certain duties to perform?

A. Yes, I did.

Q. What did you do?

A. Well, one of my duties was to inspect the central station and their operations.

Q. That is the General Alarm central station?

A. The General Alarm central station, yes.

Q. Did you make such an inspection?

A. Yes.

Q. Personally?

A. Personally.

Q. What did you find?

A. Well, I found that General Alarm——

[fol. 875] Q. Excuse me, sir. I am sorry. What was the purpose of your inspection? Why were you making it?

A. To determine the quality of service being rendered, the condition of the equipment and the manner in which they operated. There was also a lot of special requirements. Some subscribers have many irregular openings in advance, and so forth. That was really the purpose of my initial visit.

Q. You made an inspection for the purpose you have stated?

A. Yes.

Q. What did you find, please?

A. I found that their central station equipment was quite antiquated. The battery, which is the heart of the central station, was just about ready to fall apart. I found that they were not servicing the subscribers' installations. The Underwriters require a monthly inspection and test of all the sprinkler and waterflow systems. The inspections they made comprised tripping the switch, actuating the device attached to the alarm valve rather than to meet the [fol. 876] Underwriters' requirement of going to the top of the building or to the top of the system to create an actual waterflow test.

Q. Could you tell that from looking when you went to inspect?

A. Not at that time. I could tell part of that, that the maintenance was very bad, but when we finally took over the operation we found that the valve ring had been there for many years and it was frozen, as we term it, or closed and had not been operated. Then, of course, we questioned the employees how they tested the system, and they explained that they tested it from the switch and not from the inspector's test ring.

Q. These are employees of General Alarm that you talked to while making your inspection?

A. That is correct. They were at that time our employees.

Q. They had formerly been with General Alarm?

A. Yes.

Q. Incidentally, Mr. Hable, if you know, was this General Alarm Company an approved central station?

A. Yes, it was an approved central station.

Q. Go on.

A. Their trouble calls were not recorded. We had no

way of knowing what the load would be for repair [fol. 877] men on emergency repair man-hours. There were no records on that. They also had a dial connected to their burglar alarm systems.

When a subscriber made an irregular opening, he operated that dial. They did not dispatch a guard or runner to verify the person entering, whether or not he was an authorized person to enter.

There was a means they employed to minimize on the use of man power. They did not conduct any annual inspections on burglar alarm installations. The Underwriters require a complete and thorough inspection and test on burglar alarms annually. They did not test their annual fire alarm boxes.

Q. Go ahead.

A. They had one man that made a trip each day to check the transmitters to see whether or not they were run down. The records in the office were not maintained, and the only way they could give any assurance that the transmitter was wound up and ready to receive or transmit a signal was to send this man around checking the transmitters.

They did that for two reasons. Their circuits were down to between four and four and a half and five milli-amps. [fol. 878] The minimum current flowing on a circuit must be 10 milli-amperes or more in order to assure proper operation.

They reduced their current values on the circuits by the unorthodox use of building between subscribers' premises to get as much traffic out of one pair of wires as possible.

They violated the telephone company rules. We found it necessary to establish many additional circuits and to reconsolidate their circuits. They were tremendously overloaded. There was no assurance they were going to get a fire alarm signal in their central station because of the conglomeration and the numerous different types of transmitters that were connected to that circuit. I did not see how our signal could get in without being involved in a clash of other signals. We had to eliminate all of that.

Q. Well, now you did tell me though that to your knowledge the General Alarm Company was an approved central station?

A. Yes.

Q. They had the same approval that your ADT Company had?

A. They received the same insurance reduction, premium reductions as we did and other protection companies.

[fol. 879] Q. Having made your inspection and made the findings that you have just described to the Court, were you required to do something about it?

A. Yes. We had to immediately reassociate the facilities. We immediately had to abandon the use of their switchboard. We connected all of their circuits into our central station. In fact all of the subscribers went into our central station. We installed new switchboards, new timing tables to take care of that equipment.

In individual subscriber premises we had to change our contacts, that were not reliable or were excessively troublesome. We had to replace wiring. We had to restore protection that had been cut out of the protection circuit.

There was all kinds of trouble, electrical troubles on the circuits, meaning grounds, shorts, partial swinging grounds, partial swinging openings. They had to be replaced.

Q. Is it a fair statement that all of the things that you found wrong, that you described a moment ago, you corrected and made right?

A. That is correct.

Q. In substance did it involve a rebuilding of the entire [fol. 880] plant?

A. That has not occurred yet. It eventually probably will. We took immediate action on the most hazardous conditions. There are some manual fire alarm boxes that are operating well and are still in service. There were a number of manual fire alarm boxes that were assembled by the employees at their homes. They were given a basketful of components and they assembled the fire boxes on a do-it-yourself basis without inspection and test.

Q. You are still working at this?

A. We replaced them. As I say, there are other transmitters and devices that were installed at the time of our acquisition that are still in service. However, they are being tested, inspected and tested on a monthly basis to

assure that they are in good operating condition. That is our responsibility.

Q. Did all of this that you have described doing, or your company doing, following the inspection, and in order to reconstruct and reestablish this central station service formerly done by General Alarm cost your company some money and, if you know, how much?

A. I well remember the amount. It cost just as much as the Kansas City flood, very close to $100,000.

[fol. 881] Q. All right, sir. Now do you happen to know whether the Boston Public Library was formerly a subscriber of the General Alarm Company?

A. Yes, sir, it was.

Q. Are they now a subscriber of ADT?

A. They are still a subscriber. We took those over from General Alarm. They have been services ever since through the ADT Company. In that particular installation they have a manual fire alarm gong. You might call it an evacuation service. There again, as one of the installations, it was operating fairly well, although it had been installed for some time, and finally our inspection and test disclosed some of the devices were not operating and were becoming troublesome, and they were completely replaced.

Q. Who is Mr. W. J. Swett.

A. He is my Service Superintendent in charge of the Boston district.

Q. I show you a copy of a letter dated October 2, 1959, from the Boston Public Library to Mr. Swett. Have you seen that letter before?

A. Yes, I have.

Q. Did Mr. Swett as your Plant Manager refer this to you shortly after the date it bears?

[fol. 882] A. He sent that to me and it was received in my office.

Q. What is it?

A. This is a letter from the Boston Public Library. It is a commendatory letter with regard to our installing ADT equipment.

Q. Is it a short letter?

A. Yes.

Q. Would you read it please?

A. Yes, sir. It is addressed to Mr. W. J. Swett, Jr.,

American District Telegraph Company, 60 State Street Boston 9, Massachusetts.

"Dear Mr. Swett:

"It has been brought to my attention by Mr. John W. Tuley, our Fire Prevention Inspector, that the American District Telegraph Company recently completed the large task of replacing inadequate wiring of the Fire Alarm System in the Central Library Building, which was originally installed by the General Alarm Corporation before the company was absorbed by the American District Telegraph Company. Now that the job has been completed we wish to thank you and your [fol. 883] associates for taking care of the installation of new wiring and for getting the system back into good working order. Please accept our warm thanks for a job well done!"

I believe the signature is John J. Connolly, Assistant Director.

Mr. Conkling. Thank you, Mr. Hable. I offer the letter in evidence, your Honor.

The Court. Admitted.

(Letter dated October 2, 1959 from John J. Connolly, Assistant Director, Boston Public Library, to Mr. W. J. Swett, Jr., American District Telegraph Company, marked Defendants' Exhibit N-1 and received in evidence.)

Mr. Conkling. May I have one moment, please, sir?

The Court. Yes.

Q. Just one more question, Mr. Hable. Do you have any knowledge of the Underwriters Laboratories certificate count, that is the certificates issued by the ADT Company showing central station certificates and local certificates?

A. Yes, to a degree, I believe I am pretty well up on that.

[fol. 884] Q. Would you please state what you know about it for the Court?

A. Approximately one-third of our total burglar alarms bear the Underwriters' certification of one classification or another. In fact there are five types of certificates: Grade

A-1, Grade A-2, Grade A-3, a complete certificate and a partial certificate. The Nos. 1, 2 and 3 are generally applied to mercantile establishments.

The complete or partial are applied to bank vaults, safes, and the requirements as to any one of those classifications require living up to standards established by the Underwriters Laboratories.

The No. 1 certificate requires the complete protection of the entire six faces of a vault. A partial protection requires contacts only on the vault door. A No. 1 certificate applies to, say, a fur storage room, or a stock room, and that too requires all six faces, including the doors or any of the windows to be protected. No. 3 requires this for any accessible openings, doors, windows or the first floor and/or any door or window that can be reached from the first floor by an 18-foot ladder.

[fol. 885] The No. 2 requires the protection of all of the walls, all openings, excluding stationary show windows, but does not require the protection of ceilings or floors, if they are constructed of solid concrete.

Q. All right, sir. What is the most common, can you tell us?

A. No. 3 is the most common.

Mr. Conkling. That is all, your Honor.

The Court. Is there anything else?

Mr. Story. If your Honor please, I would like to just ask a few questions.

Cross-examination

By Mr. Story:

Q. Mr. Hable, do these various Underwriting organizations test and check the ADT operations quite often or just how thorough is it?

A. Referring to the Underwriters Laboratories, they throughout the year are conducting inspections and tests, not only of our central stations but also of our subscribers' premises.

Q. And that, would you say, is frequent throughout the year?

A. Oh, yes.

[fol. 886] Q. What happens whenever the Underwriters Laboratories, for instance finds something wrong?

A. They submit a written report to our company.

[fol. 887] Q. What do you have to do?

A. On that report we describe the deficiency and if it is major, it is to be corrected immediately; if it is minor, they allow you 30 days to correct the irregularity.

Q. Do the underwriting organizations dealing with fire also check your organization?

A. Yes: Continuously throughout the country. Right now we possibly are having twenty tests or thirty tests being made by those people in various parts of the country.

Q. As I recall, you purchased the General Alarm Company in 1955, is that right?

A. Yes, that's correct.

Q. You have testified you made quite an extensive investigation of those facilities, is that correct?

A. At the time we took it over, sir, we did.

Q. Did you make any inspections prior to the time your company purchased this company?

A. No, sir, we did not—not of the field installations. I did of the central station.

Q. You looked over the central station?

A. Yes, sir.

Q. At that time did you see any of these deficiencies?

[fol. 888] A. We questioned the people on the manner in which they maintained records. We asked them if they had certain forms somewhat similar to ours or the equivalent of ours. They did not. From my own observations I readily determined that they were not renderering what I called good central station service.

Q. Well, did you go to management of ADT and tell them that this was a pig in a poke, that this service wasn't any good?

A. Oh, yes. I explained that the type of service rendered by the General Alarm could not compare whatsoever with the type of central station service rendered by ADT and other companies.

Q. Did ADT have any other competitors in the Greater Boston area rendering approved central station service at the time you purchased General Alarm?

A. To the best of my knowledge, no.

Q. Do you know what your company paid for General Alarm?

A. No, sir. I am not involved in the finances of the company.

Q. Can you tell this Court any reasons why these inspectors of these underwriting organizations who are laying cold dollars on the line in premium reductions would discriminate against your company and not inspect [fol. 889] General Alarm Company?

Mr. Conkling. I object.

The Court. Yes. References to the cold war may be kept for some other place and cold dollars are no different, so far as I know, from other dollars, though I know something about hot money.

Q. Let me ask you this, sir: Were General Alarms subscribers receiving any insurance discounts at the time you inspected it?

A. At the time I inspected the central station?

Q. Yes.

A. Yes, certainly. So I was told at that time.

Q. Can you give this Court any reason why the underwriting organization should discriminate against ADT and check you day and night and not check General Alarm?

Mr. Conkling. I object to the question.

The Court. The same. There are all kinds of ways of acquainting this Court, but I would say the least effective is by arguing with witnesses.

Q. Mr. Hable, do you know whether or not the underwriting organizations ever checked the General Alarm Company?

A. I wouldn't know, sir, to be 100 per cent correct in a statement to that effect. I assume that they inspected all central station companies the same as they inspect [fol. 890] and test ADT.

The Court. Mr. Story, do you really think I am going to decide this case on the basis of the kind of testimony you are trying to elicit? I tried as best I could to make it clear to both of you that though each of you has a theory appropriate to this case which is characteristic

respectively of the Government and of the defendant, I think nothing of those theories.

I think the notions the Government has that there is some drama and color and hot-and-cold character which this Court ought to take into account is an aberration on the part of the Government.

I think the notion that the defendants have that cross-elasticity of demand, such as in the case of cellophane cigar wrappers went out of the effective vocabulary of antitrust defendants, is also an aberration.

I do not believe it makes the slightest bit of difference what is being shown in this case by both sets of counsel. I am sure that there is a cross-elasticity of demand between Ford cars, yachts, bicycles, trips to Europe, education for children, etc. I am sure that the market for amusement is unending. I am likewise certain that on [fol. 891] the respective problems of fire, police and other professions the market is unending.

I am quite certain that the market as it will be defined by the Supreme Court of the United States has nothing like the range that the witnesses in this case has tried to induce this Court to accept. I am quite sure that in the long run the Supreme Court of the United States is going to take about as narrow a view of the market as the circumstances here permit.

Mr. Story. Your Honor, after careful consideration, I have decided I have no other questions.

Mr. Conkling. Thank you, Mr. Hable.

Mr. Story. May I suggest a luncheon recess at this time, your Honor?

The Court. I don't. I have been unbelievably generous, according to my standards in allowing recesses. Go ahead.

Mr. Conkling. I withdraw the request.

[fol. 892] FRANCIS C. EVANS, Sworn

By Mr. Conkling:

Q. Mr. Evans, please state your name and residence address, for the record?

A. My name is Francis C. Evans. I live at 3672 Richmond Road, Richmond County, Staten Island, New York, 10306.

Q. That was the zip code number?

A. Yes.

Q. By whom are you employed?

A. The American District Telegraph Company.

Q. For how long have you been employed?

A. I have been employed steadily since June 23, 1931, and prior to that part-time.

Q. Prior to that part-time as what—as a young man in high school?

A. As a signal marker while I was in high school and college. In central stations in Brooklyn, Long Island City and Boston.

Q. Doing what as signal marker, you say?

A. Receiving signals and recording them.

Q. What is your present occupation?

A. I am Manager, Research and Development Division.

Q. Will you sketch briefly your educational background?

A. Well, I went to grammar and high school in Brooklyn, New York. I graduated from the Harvard Engineer-
[fol. 893] ing School with the degree of Bachelor of Science in Engineering (Mechanical) in 1931. Since that time I have taken American Management Association courses and some graduate courses at Columbia University in Mathematics.

Q. For how long have you been manager, research and development, of the ADT Company?

A. Since October, 1955.

Q. Is the Research and Development Division part of the Engineering Department?

A. Yes, it is.

Q. Now, sir, what does the Research and Development Division of the Engineering Department do?

A. Well, it brings to the electrical protection industry the knowledge and benefits of physics, engineering, engineering advances, so that electrical protection can be improved, extended, and generally made beneficial.

Q. How do you accomplish those ends?

A. Accomplish it through a staff of approximately twenty engineers, a technician, some laboratory service people and six model-makers.

Q. And do projects come to your attention for solution? How do you get to do something?

A. Projects come to our attention,—to my attention—[fol. 894] in a couple of ways. One, sales needs are made known to us; two, service problems are made known to us; three, origination and invention within the division; four, observation of what competition is doing; five, we have a feedback system of defective equipment reporting from the field, which we assess the results of; and, six, we watch engineering advances in the literature and by attending seminars and courses, and we try to bring the advantages of what we learn in that way to the benefit of the company,—and I am sure I have forgotten one or two other ways in which problems come to us.

Q. Well, I will forgive you that oversight, Mr. Evans. What comes out of the research and development division? Is there an output? Do you have projects that come to you for attention and you do something about them?

The Court. I would just as soon not have him give us an essay on the subject. I regard this as purely a waste of time. I know perfectly well what the Supreme Court of the United States is going to take with respect to research. I just want him to put on the record whatever you wanted him to say. Let's get this business into the [fol. 895] record like any other witness as quickly as possible. Tell us anything you like about the Division.

Q. Go ahead, Mr. Evans.

A. Well, in a nutshell the output of Research and Developing is information in various forms. Do you wish me to amplify the forms?

Q. Yes. I wish you to tell the Court what you have come here to tell the Court at my request.

A. Well, the output of Research and Development is information in the form of prototype models, sketches, drawings, memoranda, reports, all information, and that's it.

Q. In doing that you use equipment and materials?

A. Yes, we do.

The Court. And brains?

Q. And brains?

The Witness: I would like to think so, your Honor. But we have well equipped laboratories which enable us to accomplish the intended results. We have a sound lab-

oratory. We have an electrical laboratory and a hydraulics laboratory and environmental testing equipment.

The Court. Excuse me. Why don't you give him the question that you were going to put to him? Jog his [fol. 896] memory. He can tell us whatever he likes about that research activity.

Mr. Conkling. Thank you, your Honor.

Q. Mr. Evans, have you prepared at my request a summary in brief form of the work generally that your division has done, and have you also made a selection of four or five jobs of work that the Research and Development has done that you regard, based on your experience, as of real importance in the history and development of the electric protective industry?

A. I have done so.

Q. Will you tell the Court what you have there, please?

A. Yes. I have before me in my right hand a summary of jobs beginning in April, 1953, having to do with research and development.

In that period of time a total of 947 projects—up till now—were opened, 892 closed, and 55 are still active. Of those projects 771 involved 60 man days or less and 176 involved 60 or more man days.

Q. Among those and having all of that in mind, were there some particular problems confronting the electric protection industry exemplified by the instances you have before you written out, and would you tell the Court what the problem was and what you did about it?

[fol. 897] A. Yes. One of the very serious problems affecting the electric protection industry was the very widespread use of open electrical contacts for initiating burglar alarm signals when doors were opened lawlessly.

These contacts were subject to corrosion, effects of moisture, dirt-loading, general debilitation that takes place when they are open to the subscriber and his handling.

We solved that problem and improved the quality of the service over the years by going to contacts of a completely enclosed type. These contacts, as applied to a door, for example: There is a fixed portion which is wired to the central station or to the local control equipment, and there is a portion that moves with the door. The part that moves with the door in the old-fashioned type had to

carry current when the door was closed from one contact to another and complete a circuit.

In the solution that we arrived at for this, the use of so-called magnetic contacts, we put simply a magnet on the door, and this became possible because good magnetic materials became available some years ago, almico, [fol. 898] and the like, and we put a magnetically operable enclosed contact device on the fixed portion of the opening.

In this way we were able to make a very broad improvement which in the years from, I guess, in the last 15 years has made a major contribution in reducing the rate of trouble in the business from a rate of about 8/10ths of a case of a trouble per subscriber per month to the present level of about a quarter of a case of trouble per subscriber per month.

Q. Thank you.

A. Now, this was a pioneering effort, and has since been initiated throughout the industry and, indeed, today in addition to ADT, there are eleven manufacturers, of listed magnetic contacts listed by the Underwriters Laboratories.

Q. Thank you, sir. Now, on these other papers that you have prepared, or that were prepared under your supervision at my request, will you just read the title——

The Court. Don't bother to read them. I will admit them in evidence.

Mr. Conkling. I would like just to identify the objects, or the thing we are talking about, your Honor, [fol. 899] and then I will have the explanation placed in writing.

A. One of these is called a "Single-ended photoelectric space protection system."

Q. What next?

A. Yet another one is called a "Solid State McCulloh" system.

The Court. Both of them are admitted in evidence.

Q. What are the other two?

A. Yet another one is "ADT Type 2957 time division Multiplex Transmission System."

The Court. Admitted in evidence.

Q. One more.

A. And that's all I have here before me.

The Court. I think that is sufficient.

Mr. Conkling. Thank you, your Honor. I have these in evidence.

The Court. They are all received.

[Typical Research Projects by ADT Research Division, marked Exhibits O, P, Q and R.]

The Court. Anything else?

Mr. Conkling. I have no further questions.

The Court. Anything further in cross-examination?

Mr. Story. The Government has no questions.

The Court. You are excused. Next witness.

[fol. 900] The Court. I am going to declare the case completed rather than recess it if witnesses are not here.

JAMES A. McDONALD, Sworn

By Mr. Fritz:

Q. Will you state your full name and address, sir?

A. James A. McDonald, residing at 831 Woodland Avenue, New Oradell, New Jersey.

Q. What is your position with the defendant ADT?

A. I am the vice-chairman of the board of directors.

Q. Just briefly, what has been your past experience with the ADT Company?

A. I have been with ADT 43 years from 1921 until about 1953, serving in various financial capacities. During that period I have been assistant auditor, auditor, auditor-secretary, vice-president and secretary, and then vice-president.

In about 1954 I was elected ADT first vice-president and served in that capacity about eight years, the first two of which I was in charge of all operations of the company, and for the last six in charge of all operations with the exception of sales.

[fol. 901] Two years ago I was elevated to my present position.

Q. In the course of that long experience, have you had any direct actual sales experience?

A. No.

Q. Because of your long association of 43 years are you familiar with the history of the company and its origin and development?

A. Yes, I am.

Q. Could you give us just a capsule picture of that?

A. About the latter part of the 19th century numerous companies by the name of American District Telegraph Company were incorporated throughout the United States. Their original function was to pick up and deliver Western Union messages. They were housed in the Western Union offices.

These companies early began to look around for other sources of income and found it in supplying various forms of electric protection services.

In 1901 the Western Union Telegraph Company incorporated an American District Telegraph Company in the State of New Jersey, whose capital stock was exchanged on various bases for the capital stocks of all these numerous ADT companies throughout the country. [fol. 902] We eventually had to move out of the Western Union offices, until we now share occupancy with them only in seven locations.

Q. You do have still seven remaining, is that correct?

A. We have seven locations where we still remain with Western Union.

Q. And did these companies then in the various states of the Union turn to the question of furnishing electric protective service?

A. Very early. Very early.

Q. Just briefly, what is the company's present structure, Mr. McDonald?

A. The ADT system organization supplies electric protection services through 120 central stations, each of these being autonomous in operation, complete within their own manager, sales forces, technical forces required to install service and operate the protection services.

Q. And you have a headquarters company and system, do you not?

A. We do.

Q. What does that consist of?

A. At system headquarters there are performed many administrative functions, such as auditing, accounting, advertising, sales supervision, service supervision, manu-

[fol. 903] facturing, engineering—in short, just about all of the functions that can better be performed in one central location than at many.

Mr. Fritz. I would like to offer in evidence a present charge of organization without bothering to show it to the witness.

The Court. Admitted.

[Job summary from April 1953 to June 1964 marked Exhibit S-1. Present charge of organization marked Exhibit T-1.]

Q. Approximately how many employees does the company have?

A. About 5,000 in the system organization.

Q. Over the years have you had familiarity with the acquisitions which ADT Company had made of other businesses?

A. Yes.

Q. Going back to about 1946 can you state which ones they were?

A. Yes. They comprise the Reliance Alarm Company in Detroit, Michigan.

Q. Would you keep your voice up, Mr. McDonald? It is a little hard to hear.

A. They comprise the Reliance Alarm Company in Detroit, Michigan; the Ludlow Automatic Fire Alarm Com-
[fol. 904] pany in Cincinnati; the American District Telegraph Co. of Cincinnati; the Crown——

The Court. Aren't all these shown in some table?

Mr. Fritz. Yes. I wanted to predicate a question or two on them.

The Court. I suppose the form of the transaction or acquisition must be a matter, in such a company as this, of record.

Mr. Fritz. It is.

The Court. Well, I will receive a table showing the acquisition at an appropriate time.

Mr. Fritz. Thank you, sir.

[fol. 905] Q. Do you know, Mr. McDonald, with respect to the acquisition you discussed, and those his Honor

just referred to, whether the initial approach with respect to those was made by your company or by others?

A. To my personal knowledge all acquisitions were based upon approaches made by the principals of the company and none initiated on ADT overtures.

Mr. Fritz. I offer in evidence at this time the letter from the United States Department of Justice with respect to the acquisition of the General Alarm Company in July of 1955, which is one of the companies on the list.

Mr. Story. I object because it is completely irrelevant and immaterial, your Honor.

The Court. Well, it is obviously the kind of document which is self-serving and is ordinarily not admissible. I admit it.

(Letter dated July 14, 1955 from Stanley N. Barnes, Assistant Attorney General, Antitrust Division, United States Department of Justice, to Frank A. Fritz, Esq. re: Acquisition of General Alarm Corporation by ADT [fol. 906] Company of Massachusetts, marked Exhibit U-1 and received in evidence.)

Q. Mr. McDonald, you have heard Mr. Hable describe the condition which the General Alarm Company service and equipment was found to be in at the time of the acquisition by ADT?

A. Yes.

Q. Do you know in terms of money approximately what it cost to bring it up to ADT standards?

A. Approximately $100,000.

Q. Now in the Government's Brief on the subject of acquisitions there was included, Mr. McDonald, the name of the AFP Company, and a sum of $13 million included in the total of alleged dollar acquisitions. Are you familiar with the contractual arrangements between AFP and the ADT Company?

A. Yes.

The Court: I suppose they are evidenced by documents.

Mr. Fritz. There is no question about that.

The Court. What do I care then about a description of the document?

Mr. Fritz. I am not going into what the contract says.

Q. Do you know if the AFP was a central station company?

[fol. 907] A. It was not.

Q. What was it?

A. The AFP Company actually was an incorporation of the inventor who developed and patented one form of service, sprinkler supervisory and waterflow alarm service. He incorporated himself in 1905 as AFP, Automatic Fire Protection Company, and entered into a contract with ADT, which is in evidence.

Q. Did a time come in 1949 when ADT and AFP made a disposition of their respective claims and obligations under that contract?

A. The arrangement between ADT and AFP terminated in 1949 by ADT's agreement to pay AFP $13½ million in $900,000 annual installments for a period of 15 years, the payments to terminate in the last year.

Q. By the payment of that sum did ADT acquire any further or greater number of central station protection subscribers or increase its central station business in any way?

A. None whatever.

The Court. The Court will take a recess until two o'clock.

(Recess.)

[fol. 908] Q. Mr. MacDonald, would you give us a very brief statement of ADT's assets, describing the percentage of same which it has invested in subscriber plant?

A. At the close of 19——

The Court. Have you a sheet there with all that information?

Mr. Fritz. No, sir. It is a very short statement.

The Court. All right. Go ahead.

A. At the close of 1963 the Company's gross balance sheet assets equaled $143,000,000. The gross value of equipment within the premises of subscribers to central station service totalled about $81,000,000—ratio of 58.3 per cent.

Q. The basis upon which that appears on the books is what—original cost?

A. Original cost.

Q. And a lot of this property is of considerable age, is it not?

A. Yes, it is.

Q. Am I correct in suggesting that the reproduction cost new value of that property would be higher than what you have on the books?

A. Quite considerably.

Q. But no study, I understand, has been made of reproduction costs new nor has there been any occasion to do [fol. 909] it in the regular course of the company's business, is that right?

A. That is right, sir.

Q. I hand you, Mr. MacDonald, a statement of company's revenues, gross and net, balance sheet assets and certain indicated ratios for the five calendar years ending 1963. Were these prepared under your supervision, and are they correct?

A. Yes, they were.

The Court. The exhibit with its attachments is admitted. Statement of Company's revenues, gross and net, is admitted.

[Statement of Company's revenues, gross and net, for 5 calendar years, ending 1963, marked Exhibit V-1.]

Q. This last exhibit which shows the percentage of net profit to revenue and then to total net assets and then to total gross assets—does it not?

A. That's correct.

Q. In each case has there been a decline in the ratios during the last five years?

A. Yes, there has.

Q. Now I hand you further, Mr. MacDonald, a statement headed Ratio of net earnings to gross assets, net [fol. 910] assets and net worth, for the period 1947 to 1963, inclusive, and ask you if these were prepared under your supervision and whether they correctly state what they purport to state?

A. This statement was so prepared.

The Court. Admitted.

[Ratio net earnings to gross assets net, etc., 1947-1963 marked Exhibit W-1.]

Q. It was testified here this morning, I think, that the number of employees of your company is something over 5,000 people, is that correct?

A. That's correct.

Q. This being a service company, am I correct in suggesting that a substantial portion of the company expense is due to labor?

A. Quite correct, yes, sir.

Q. Can you state what portion of the company's expense is allocable to labor and the reasons for it?

A. In 1963 our gross cash outlays totalled about $71,000,000, of which payroll disbursements equalled $32,000,000, or 45.5 per cent of the total.

Additional to that I have had the controller prepare a [fol. 911] statement showing the ratio of labor expenditures appearing in the income statement to total income expenditures. That percentage equalled approximately 60 per cent. It would be expected, I think, that in a service organization expenses for labor would be relatively high.

Q. I gathered from your early statements in your testimony that you have been concerned essentially with the matters of finance and money for the company, is that correct?

A. That's correct.

Q. Have you performed certain functions in connection with the determination of the company's prices for its services?

A. Yes, I have.

Q. What in that connection, will you tell us, have you done from time to time?

A. One of my principal functions in that connection is to verify the accuracy of cash and earnings projections upon which our pricing is predicated.

Q. Your prices, as I think appears clearly on the record, consists of two charges. One is the annual service charge, and the other is the advance service charge, is it not?

A. That's correct.

[fol. 912] Q. Can you state for each how they are determined?

A. Advance service charges are predicated upon system average installation unit costs by classes of service and adjusted from time to time to approximate such figure,

the annual service charges,—a derivation of these is lost in antiquity. They are expressed——

Q. I don't know what you said there. They are lost where?

A. In antiquity. These charges are predicated upon so much for the first unit of protection equipment installed and so much smaller amount for each additional unit.

The price list was established when I came with the District Company 43 years ago, and the relative difference between the first and the subsequent unit charges has not changed greatly over all the years.

Q. How do you develop the annual service charges when you come to consider the question of pricing?

A. Starting from the controller's projection of earnings for the forthcoming year, we ascertain by what amount the gross revenue projection fails to meet an expectant 85 per cent operating ratio,—that is, the ratio of total operating expense to total operating revenue; the deficiency, if any, is then related percentagewise to the [fol. 913] total volume of new annual service charges expected to be written in the ensuing year based upon the prognostications of our Sales Department and as carried into the Controller's earnings projection.

If the deficiency should prove to be as much as 5 per cent, then 5 per cent is added to the last prevailing schedule of annual service charges both for the first and the subsequent units of protection equipment.

Q. When you are engaged in this process, I assume that you have a target in mind for a rate of return, is that correct?

A. That is absolutely correct.

Q. What target do you have?

A. We seek to achieve a rate of return, a rate of profit, after taxes, equal to 6 per cent of the value of equipment within subscribers' premises.

Q. And in the last four or five years has that target been achieved?

A. No. We have not achieved it. We fall short of it.

Q. Where does it lie?

A. It lies about that 5 per cent realm now.

Q. In addition to the charges which you have just de- [fol. 914] scribed and which relate to the rendition of service involving the use of your central station and property on subscribers' premises, the company does engage in some outright sales, does it not?

A. Yes, it does.

Q. And is the pricing of such equipment on a different basis than that for the service?

A. Totally different. Our advance service charges contemplate only bare-on-the-job cost of sites.

Q. What do you mean? Let's take that for a moment. Whad do you mean, "our advance service charges" include only on-the-job or site costs?

A. They include the direct cost of material as it comes from the factory, plus only a system handling, material handling, loading. It includes only the direct labor that enters into the construction right at the job site, plus a certain amount of local supervision exercised over that, —not all supervision, by any means.

Now, in addition to these expenditures, there are a host that are in our public utility accounting, you might say, —simply charged as offsets to revenue: Advance service charges contain nothing to comprehend any sales expense, [fol. 915] nothing to comprehend the administration of the company's plant for pensions, disability benefits, and death benefits; nothing for Social Security taxes; nothing for miscellaneous taxes; and, most certainly, nothing for profit.

Now, when we come to price for outright sale each element of cost that enters into the outright sale must properly bear its proper share of each one of these items of loading that ordinarily we charge to expense.

Q. You made a reference to a public utility type of accounting a moment ago, did you not?

A. I did.

Q. And, of course, the fact is that ADT was at one time owned by a public utility, namely, the Western Union Telegraph Company, is that right?

A. Yes, for 53 years.

Q. And are the accounting systems and methods that were then employed carried over into the determination of the advance service charges now?

A. Yes.

Q. In the matter of outright sales, does this memorandum that I show you, indicate the basis for determining prices on such items?

[fol. 916] A. Yes, this is a copy of a commercial circular issued to all our sales forces which proclaims the method

of determining the selling price for any equipment sold outright.

The Court. Admitted.

[Memorandum indicating basis for determining prices marked Exhibit X-1.]

Q. Who are the people who usually use the type of equipment which is referred to in this last exhibit and included in outright sales pricing?

A. Those prices are employed chiefly in connection with outright sales to the U. S. Government and large proprietary installations to commercial subscribers, where the subscriber maintains his entire central station and undertakes usually his own maintenance inspection and receipt of signals.

Q. This is what is known as the proprietary system, isn't it?

A. That is correct.

Q. And by the term meaning it is owned by the customer, correct?

A. That is correct.

Q. It has been proved here, I think, through the Govern-
[fol. 917] ment—and I think we, too—that you have a document known as Minimum Basic Rates, is that correct?

A. Yes, we have.

Q. The short name for that in the business is the MBR, isn't that right?

A. Right.

Q. What is the necessity for establishing MBR?

A. It is established as a sort of target or a guide for our salesmen. It is a figure that a salesman is either expected to attain or to qualify. That is not to say that we have any realization that the salesman is going to be able to achieve it in all instances. It is nothing out of the world but a guide.

It could be perfectly futile to expect the salesman to try to sell in accordance with this price list, as a fixed price list, when he is perfectly well aware that he is meeting some form of competition. The real prices are established down in the market place, as any other prices are.

If a salesman encounters competition, he is entitled to meet it at a lower price and to explain the price that he

[fol. 918] got and why he had to charge this price on company standard forms.

There are other reasons for modifying minimum basic either upwards or downwards. The salesmen know that all our prices are predicated upon system average, either installation costs or operating costs, but he isn't trying to sell an average installation system. He is trying to sell a specific one. If he comes across a nice, clean installation adjacent to the central station, he knows that the costs for leased lines is going to be low. He knows that the cost for runner service is going to be inordinately low. He might feel well justified, if he meets resistance from any source, in reducing the price and explaining why he did it.

Conversely, if he finds one a distance remote from the central station with long reaches for wire facilities at a high cost and installation is going to be extravagant and runner cost and especially where the industrial process is such as to impair the operations of the system, he is not only permitted but is required to add something to minimum basic prices.

Each sale that the salesman has to make is an individual [fol. 919] one. He meets all kinds and conditions of circumstances. We are well aware of that. So that within the restraint imposed by the minimum basic rate chart, the salesman is expected to use his own good initiative and judgment in moderating it.

Q. And, in general, is that the purpose of the MBR and also, as you understand it, its application in the field?

A. Precisely. We know that if these minimum basic prices can be reasonably reached or approximated, the rate of return is going to give us what we feel to be a proper competitive return on investment and a proper operating ratio. Anything else will not.

Q. Have you prepared at my suggestion a statement covering the period 1957 to 1962, showing by cities the annual averages in minimum basic annual and advance service charges that were obtained?

A. In excess of minimum basic? Yes.

Q. And on a city-by-city basic?

A. That's correct.

Q. Was this prepared under your supervision and does it correctly state what it purports to state?

A. Yes, it was and it does.

The Court. It is admitted.

[fol. 920] [Statement for 1957-1962 showing city-by-city the annual averages in MBR, marked Exhibit Y-1.]

Mr. Fritz. There is no confusion except on my part. The document contains all the years.

The Court. Thank you.

Q. These statements are pretty well self-explanatory, are they not, Mr. MacDonald?

A. I believe them to be. The purport of them is to show that cases where there were MBR overages, the amount of the overages was almost infinitesimal in relation to the total volume of business written. That will be apparent from reference to the statements.

Q. Based upon your experience in this company, going back many years, and especially dealing with the question of pricing, is it a difficult matter for the company precisely to determine the cost of a particular installation on a given subscriber's location?

A. I'd say it is almost an impossibility, Counselor.

Q. That, I take it, is impossible for some of the reasons that you gave us before,—the differences in different locations and constructions and the necessity really for tailor-made jobs, is that right?

A. Every job is a tailor-made job. What we did at one [fol. 921] time before we proceeded on this minimum basic rate-making,—we used to have a foreman go out to accompany every salesman to survey the precise installation. What we got at best was only his statement of what it was going to cost to install at a tremendous expense. You have to go around and measure the lengths of wire and the number of instruments, and he would have to set them down and total them, and he would have to load overhead.

It was no more accurate than the scheme we use now whereby we take the average of hundreds of thousands of these. It was altogether too costly to restore to the other method of doing business.

Q. Today you have some 60,000 subscribers—correct, and that would be some indicia of the difficulties of the task?

A. Yes.

[fol. 922] Q. In connection with the pricing discussions,

do the sales people both in the field and at headquarters complain about the pricing by the company?

A. Oh, yes, Mr. Fritz.

Q. Are they consulted about it?

A. Oh, Yes, they are consulted. We consult with them, repeatedly, orally and in writing. They have objected to our price increases. They complain that they are pricing themselves out of the business. I don't know what else you can expect a salesman to do. This is a perfectly natural reaction. A salesman wants to get a price for his product at a lower rate, feeling that he can sell more.

Q. And do these two documents I show you illustrate complaints, one from the field and one from headquarters, to you on this subject of pricing?

A. They are illustrative of many I have seen.

The Court. Admitted.

The Witness. Let me say——

The Court. No. Let the question come to you.

[fol. 923] Q. I think you said, Mr. McDonald, that the advance service charges include certain job costs and they exclude other costs which you have enumerated, is that correct?

A. That is correct.

Q. And I think you said in effect, and if it is not so I ask you if it is true, that the advance service charge or price as determined includes all costs and a profit?

A. Oh, no.

Q. Does the company in fact, when it receives its full full price for advance service charge, in connection with an installation, by that price recover its full charge and a profit?

A. Not necessarily, counselor.

Q. On a nation-wide basis, what are the figures with regard to the percentage of recovery?

A. With respect to all installations cleared, from construction work in progress to the plant accounts, for the entire year 1963, the advance service charges collected equal 63.6 per cent of the actual cost of these installations.

Q. What does the ADT Company do for the advance service charge imposed?

[fol. 924] A. For the advance service charge imposed ADT undertakes what I regard as a contractual liability

to maintain equipment in the subscriber's premises in a high operable condition at all times, no matter whether the contractual relationship endures for five years, ten years or 20 years. It is expressed right in our subscriber's contract, which already is in evidence, for the money we get.

Q. Is that the way it is carried out in practice?

A. That is the way it is carried out in practice.

Q. If a piece of equipment on a subscriber's premises needs repair or needs new parts or needs complete replacement, does the subscriber get it without additional cost?

A. Exactly.

Q. Did you hear Mr. Hable's testimony this morning with regard to replacement on the subscriber's premises in the event of castastrophes?

A. Yes.

Q. Are you familiar with that?

A. Yes.

Q. Is that the fact?

A. Yes, precisely the fact.

Q. Kansas City, that situation, for example, do you [fol. 925] remember approximately how much that cost the company?

A. It was in excess of a hundred thousand dollars.

Q. Without any cost to the subscriber?

A. Without any cost to the subscriber.

Q. I note in your company's contract, Mr. McDonald, there is an escalator clause which gives the company the right to increase prices from time to time. Are you familiar with that?

A. Yes, I am.

Q. To your knowledge has that escalator clause ever been invoked by the company?

A. It has not.

Q. Do you remember what the origin of it was?

A. It was inserted in all contracts in about 1947 at the suggestion of Walter P. Marshall, President of Western Union, and then the ADT Board Chairman. It was inserted as a sort of anchor to windward, in the event of some financial collapse that might occur in the country, under which ADT would find it impossible to supply the services for which it had contracted at the price specified in the contract. We have however, never invoked it.

Q. You heard Mr. Evans' testimony this morning?

[fol. 926] A. Yes.

Q. He is manager of the Research and Development of the Engineering Department of your company?

A. Yes.

Q. I am not going to ask you to talk about that in detail. But do you know what the annual cost incurred by the company is for maintaining that department?

A. Last year we spent in excess of $1,800,000 in the maintenance of the Research and Development Department or 2.9 per cent of gross revenues. This percentage compares with 3.3 per cent expended by the entire electrical communications industry within the same year, as shown in the figures of the National Industrial Conference Board and reported by them in its 1963 Economic Almanac.

Q. Over the years, as far as you can recall, while you were in an executive position, at least, has the company had a program or method by which it determined when and where it would or would not open new central stations?

A. Yes.

Q. What is it?

A. The venture would start usually with recommendations of our field people, who are more familiar with the [fol. 927] typography than we would be at headquarters.

Q. The suggestion would emanate from the field?

A. The suggestions would emanate from the field. However, they all had to be qualified, when they reached the executive office, in terms of a rather intensive market survey.

Q. When you use the term "qualified" do you mean to say they had to measure up to proper standards, is that what you mean?

A. Yes. They had to meet all reasonable financial tests.

Q. I do not mean to interrupt you. Go ahead. Tell us what you do.

A. We would ask the Sales Department as to just exactly how many prospects they expected to write this year and within a period of five years. I would have the controller make projections on the basis of these numbers of subscribers and our knowledge of the cost to operate, likewise extending over a period of about five years. And if we could not see a pretty clear way to break even at the end of five years, we would say that it is not a very good venture. We would say to the Sales Department "No, you

[fol. 928] may want to do it but financially it is not feasible."

Q. Have there been situations in which the conclusion went both ways?

A. In some instances it was found economically feasible to open a central station and it was done, and in other cases it was found not feasible and it was not done.

A. Yes. Two situations come to mind. In about 1952 or 1953, we were requested by the Sales Department to open up a new central station in the Wilkeshire Boulevard section of the City of Los Angeles. I personally made a trip out there just to survey the real conditions encountered. It seemed to me that for the foreseeable future we would be better advised to sustain the cost of added wiring and to reach the area that way than to sustain the initial heavy cost of opening and managing a central station.

Q. It was not done?

A. That is what we did then, and that is what we have done ever since, and we still haven't got a central station on Wilkeshire Boulevard. Another occasion is a central station was proposed to be opened in Charlotte, North Carolina. This one, too, I turned down on the basis of [fol. 929] economics. We were already enjoying quite a sizable volume of direct connected service with a nice profit. I said, "Well, we will continue to take our profit on the direct connected service and we won't open up a new central station until I see a greater necessity than I see presently."

We did not open up one for several years after that. We finally had to up one in because the City Manager in Charlotte told us that our direct connected service was encroaching altogether too much on the time of his Policemen and Fire people and occupying too much of the premises.

Q. Prior to that time your subscribers had been served by direct connected service, is that right?

A. That is right.

Q. A moment ago, in your discussion here, you mentioned the fact of a break-even point. Does that mean the point at which—and I assume it does—operating expenses and revenue equalize each other?

A. That is right.

Q. Do you have any familiarity with respect to the local variations that are encountered in operating costs which lead to differing break-even points?

A. Numerous variations in local costs are encountered. [fol. 930] I think I can best illustrate by two examples. We opened a central station in Wilmington, Delaware, sometime within the last ten years.

Q. 1952?

A. 1952, yes. We broke even, after a very few years, with a gross revenue of about $73,000. This is extremely low, in my experience. We sought the reason for it. We found it in the terrifically concentrated volume of subscribers, who were adjacent to the central station, with relatively short wire runs and very little involved in the way of runner time, good clean installations. We were able to operate with a minimum of central station forces.

Q. When you say "short wire runs" you are talking about the length of the line which you have to lease from the telephone company and the consequent rental to be paid, is that correct?

A. That is correct.

Q. Conversely, have you had another situation that presents a different picture?

A. Conversely, a few years later we opened a central station in Sacramento, California. We did not break even until after a period of eight years there. We broke even [fol. 931] at a total volume of $235,000 gross revenues.

Q. What was the reason for that?

A. We were burned initially by what we felt to be unusually harsh rules of the Pacific Rating Board. They required us to maintain more men around the clock than we ordinarily would in an office of that size and that age.

We also found that there were longer wire runs in Sacramento and the runner time was extended.

Q. Because of the spread-out nature of the area?

A. That is correct. It was more costly. Another factor enters into it. The fact that practically all installations in Sacramento were made in or after 1954, during which time ADT adopted the accelerated rules of depreciation permitted by the 1954 Revenue Act. Costs were high and hence the break-even point became high.

Q. What has been the experience of the company with

regard to the period of years involved before a central station can be expected to break even?

A. We usually estimate that a central station properly surveyed, properly placed, properly operated, should break even in about five years. It will be a deficit up to that point. [fol. 932] Q. Does the ADT Company have a Pension Plan, Mr. McDonald?

A. Yes, it does have a plan, which was adopted in 1913.

Q. Is this a copy of it?

A. That is a copy of it?

Mr. Fritz. I offer it in evidence.

The Court. Admitted.

The Witness. It is an unfunded plan.

Mr. Fritz. Wait a minute.

Q. I think you were saying that this was an unfunded plan, is that right?

A. The plan is unfunded, and it is likewise noncontributory as far as the employees are concerned.

Q. Do you know the number of pensioners that are now on the rolls?

A. Yes, 418.

Q. And the annual expense, approximately?

A. $637,000.

Q. Has your work taken you into the question of costs for physically equipping a central station and the [fol. 933] recurring annual operating costs?

A. Yes.

Q. What does that show to you or what are they in fact?

A. A central station, as testified by Mr. Hable this morning, can barely open, that is with the bare necessities, for $25,000. With the addition of such fringes as automobiles, two-way radios, furniture and fixtures, and inventory supplies and maybe working cash balances might double that sum.

The annual cost to operate a central station having a volume of revenue of about $125,000 should be $115,000.

Q. Mr. McDonald, if a competitor possessed just one central station in a city where ADT had more than one central station in operation, in your opinion would that competitor effectively compete with ADT?

A. Yes.

Q. Would you state why?

A. It is being done presently in Los Angeles, Cleveland and Chicago. It is possible for this reason, that by means of operating with circuit transmitters, and by that I mean with transmitters within the premises of the subscribers, which sound a signal to the central station, all the competi-
[fol. 934] tor has to do is sustain this wiring cost, and he does not need to open up a central station.

Subscribers can be reached at a distance of 20 miles in any direction from a central station thus operated.

Q. Mr. McDonald, of course you are familiar with the existence of the old March 29, 1907 agreement, which is in evidence in this case, are you not?

A. Yes. I am.

Q. Are you familiar with the negotiations between the Grinnell Corporation and your company which led to the termination of that agreement in the preparation of the Device Sales Agreement in the early 1950s?

A. I am familiar with them.

Q. Did you participate in them?

A. In every one.

Q. Will you tell us briefly what the negotiations were and how they developed and how they finally were consummated?

A. They commenced in 1946 and they continued with some interruptions until 1952. Initially, I think both sides were contending for something like a continuance of the existing 1907 agreement, with perhaps some modification of the proceeds on each side.

[fol. 935] Q. Would you keep your voice up a little bit.

A. However, in 1951, our attorneys, who were helping us with the negotiations, the firm of Milbank, Tweed, Hope and Hadley, told us out of the blue that they felt the 1907 contract was perhaps tainted with some antitrust difficulty, and that for fear of violating the antitrust rules we might not perpetuate the 1907 agreement in any manner, shape or form.

Q. Is that the first time you had ever had any intimation or opinion of that kind?

A. Exactly.

Q. During those negotiations was there any contrary legal opinions voiced to your knowledge?

A. Oh, yes, there were.

Q. By whom?

A. I don't believe the attorneys for Grinnell believed this to be the case. They had some plausible argument but they did not prevail against the advice of our own attorneys.

Q. And so you proceeded to do what?

A. We proceeded to do this. We recognized that Grinnell had furnished and installed actuating devices within the premises of subscribers for sprinkler supervisory [fol. 936] and waterflow alarm service.

Q. Was that everywhere, where ADT had been furnishing service through its respective companies throughout the country?

A. Everywhere.

Q. All right.

A. We had been, since 1915, under the advice of our own attorneys, that Grinnell owned these devices that they furnished and installed. We were faced with this quandary.

The agreement did not have very long to run to maturity. We expected to remain in business a long time after that. We had to have these devices that were Grinnell's. We had to operate them. Therefore, we realized that we were going to have to make some arrangement either to lease them or buy them.

With the approval of our attorneys, we resumed negotiations with Grinnell but only on the basis of buying, or in some way getting the right to use these actuating devices, which Grinnell had in the subscribers' premises.

We argued our extremes of position until about the [fol. 937] middle of 1952, with Grinnell contending that the devices, in their opinion, were worth to the ADT 20 per cent of collections from subscribers for the length of time such collections should be made.

Q. In the contracts then in existence, I take it?

A. In contracts then in existence—which would be in existence at the termination of the contract.

Q. Yes.

A. ADT was contending for not more than a 15 per cent share of collections. Actually, a bargain was struck and a handshake affected, and this for a precise composite of those two figures, 17½ per cent of frozen collections from subscribers. It was made clear that where a contract increase should take place Grinnell did not share in that

contract increase. The purchase price, the installment payments remained, 17½ per cent of the rental, as it existed at 2-18-54.

Q. Did that result in the letter agreement of December 29, 1952?

A. Correct.

Q. Which in this case is Government's Exhibit 89?

A. Yes. One other thing that I should mention, Mr. Fritz, is this. When we resumed negotiations with [fol. 938] Grinnell, following this 1951 disclosure, our attorneys made it crystal clear that no payment to Grinnell must contemplate the Grinnell Company was not to compete with ADT for they said that this would be violative of the statutes too.

Q. There was no such covenant?

A. No, sir, there was no such covenant, no such thoughts in our mind. Grinnell owned the actuating devices, which we needed, which we had to have. We purchased those devices for a satisfactory price. That is all we got from Grinnell.

Q. During the course of those negotiations did you personally undertake to satisfy yourself as best you could as to what the value of those devices was? I mean as a means of arriving at an appropriate price to pay for them.

A. Yes, I did. No financial officer of the company could undertake to make a deal like that without reasonably assuring himself and his Board of Directors that the price paid was a reasonable one in all the circumstances.

Oh, yes. I had projections of revenue made over an estimated period of 20 years. I had projections of costs made [fol. 939] to the best of my ability. These were the things that assured me that the contract we were entering into was a good one, and I so convinced the Board of Directors. It was approved on that basis.

Q. Are you familiar with the contractual arrangement between Automatic Fire Alarm Company, one of the defendants in this case, and the American District Telegraph Company?

A. Yes, I am.

Q. Very briefly, and without trying to construe the contract, what is the fact of the relationship between these two people?

A. This was an arrangement between the two companies, and to which Grinnell was also a party, under which AFA undertook the sale of the sprinkler supervisory and waterflow alarm service in the three cities in which they maintained central stations.

Q. They being what?

A. They being Boston, Greater New York——

The Court. Mr. Fritz, these contracts speak for themselves, and if they require any summary, you can make it.

Mr. Fritz. I wanted to come to the termination, that's all.

[fol. 940] The Court. All right. Termination is a very good word.

Q. On February 18, 1954, did that agreement come to an end by its terms?

A. It did by its terms.

Q. What happened?

A. At that time ADT and AFA were unable to agree as to who owned what part of the business that was built up. The agreement was utterly silent as to what was going to happen. Actually, in desperation we renewed the contract for a further period, and even today it is running on a month-to-month basis.

Q. With such modifications as the documents will show?

A. Yes, with such modifications as the documents will show. They are all in evidence.

Q. But at the present time, as a matter of fact, AFA procures contracts for the sprinkler supervisory and waterflow alarm service and your company actually renders the service, and there is a division of the revenue?

A. Yes. Actually, counselor, in recent weeks or recent months there have been overtures made by ADT to AFA [fol. 941] looking toward the settlement of all this.

Q. You are trying to terminate it?

A. Yes. There is a reasonable expectation that we may.

Q. This Device Sales Agreement that you mentioned before was consummated in point of time, was it not, prior to the acquisition by Grinnell of the 62½ per cent of the ADT stock formerly held by Western Union?

A. It was a complete and clear an arms length negotiation concluded in 1952. Grinnell did not acquire any interest in ADT until 1953.

Mr. Fritz. May I have just a moment, sir?

The Court. Yes.

[fol. 942] Q. Are you familiar, Mr. MacDonald, with the increase in the number of approved central station companies since 1945?

A. Yes. In 1945 there were eight such approved companies. There are now 42 excluding the defendant alarm companies.

Q. You are aware, are you not, that in this case the Government has proposed that there be some type of divestiture on a local level, that is, on a city-by-city basis, using as a break-even point $125,000 and a population of 150,000 people?

A. I am familiar with that.

Mr. Story. Your Honor, I object to that. I don't see any reason whatsoever that we should get into the relief portion of this case.

The Court. It is perfectly proper because, so far as I am concerned, if you prevail, I am going to write a decree without any further delay. There is not going to be a second hearing.

Mr. Story. Your Honor doesn't plan to have a hearing on relief?

The Court. Not at all.

Mr. Story. Very well. Very well. No objection.

Q. Have you, Mr. MacDonald, in your own company, with your own officials, information relating to financial [fol. 943] matters and in collaboration with our outside accountants, Messrs. Price, Waterhouse, sought to reconstruct using the 1962 figures of expenses and revenues, what the effect of such divestiture would be as proposed by the Government?

A. Yes, we have, and we did, Mr. Fritz.

Q. With what result?

A. We took our conventional revenue and expense breakdowns by offices throughout the entire country. We ascertained how many of them would fall within these criteria laid down by the Government, that is, having in excess of $250.000 worth of revenue in cities having a population of 150.000 or more. We found twenty-seven such cities in 1962.

After we had made full reconstruction of the revenues and expenses divesting the companies of at least $125,000, giving effect to all the modifications the reductions in expenses that we reasonably felt would be possible by reason of such divestiture, we came up with this result: Six of the offices proved to be deficit completely; eight of them had marginal profits, and by this I mean less than 4 per cent. When I say "less than 4 per cent", maybe one had 4 per cent and the rest were lower than that.

[fol. 944] Thirteen offices turned out to be profitable,—reasonably profitable so that they gave every appearance of being able to support two viable central stations.

Q. Did you have your procedures as well as the application of those procedures, based upon this $125,000 break-even point and 150,000 population examined by Messrs. Price, Waterhouse?

Mr. Story. Your Honor, I would like to set the record straight. The Government has not within the last three or four years mentioned anything about population. I think we have made it perfectly clear that it does not in all instances have to do with the population. It has to do with whether or not the particular city is an industrial city, whether or not it is a transportation or distribution center, and I object to Mr. Frantz injecting this 150,000 population thing into it. That is not the Government's contention.

The Court. Apart from any reference to what the Government is contending, will you answer the question?

The Witness. Yes, sir.

A. I did have all of our computations examined most minutely by Price, Waterhouse & Co., who have been [fol. 945] our accountants for in excess of fifty years, who are throughly familiar with our code of accounts, and all aspects of it.

Q. Have they presented you with this letter certificate with the appendices attached?

A. I have seen the letter, Mr. Fritz, and I think it describes most succinctly just precisely what we did and what the auditors verified.

Mr. Fritz. Now I offer this only for the purpose of obviating the calling of the partner of Price, Waterhouse who was in charge of this matter.

The Court. I will receive it, and if there is any reason why the Government contends that this is not an accurate statement, they can call back Price, Waterhouse.

[Price, Waterhouse report, 5/27, marked Exhibit LL.]

Q. My associate and son says he believes we did not knock off any cities on the basis of population, but solely on the basis of the $125,000 worth of revenue. I think he is right. Do you agree?

A. I could stand corrected. Somewhere the 150,000 population did get mentioned and maybe my mind seized on it.

[fol. 946] Q. We did not use that as a necessary criteria?

A. Primarily the criterion was $250,000 worth of revenue, because you can't carve out 125,000 unless you have that much.

Mr. Fritz. Your Honor, on this point I really am inquiring. I have a very great amount of financial detailed data underlying this procedure on a city-by-city basis which your Honor may or may not care to have, and care to see. I didn't plan to use it here today, but it is available if the Court wants it.

The Court. Why don't you just introduce it in bulk? It may as well be in the record as long as the other things are.

Mr. Fritz. I don't like to do it on that basis really, but may I do it then in the morning? I didn't bring them here.

The Court. Yes. An exhibit number will be reserved for it. What is the next number?

Secretary. M-M.

The Court. Admitted. All you have to do is deliver it to the clerk. It doesn't even have to be done in open court.

[Table of detailed financial data city-to-city basis, marked Exhibit M-M.]

[fol. 947] Q. Were there two sample statements prepared by you showing this procedure, one with respect to New Orleans, and the other with respect to the Richmond central station, Mr. MacDonald?

A. Yes, there were.

Q. And were these prepared under your supervision and do they correctly show what they purport to show?

A. Yes. I think for clear intelligibility reference must

be made to the Price, Waterhouse report. The adjustments, revenue and expense-wise, were made precisely as they described it. I haven't bothered to describe it here. I have merely shown the results.

Mr. Fritz. I offer it in evidence.
The Court. Received.
The Clerk. Two separate exhibits?
Mr. Fritz. Yes.
The Court. Two separate exhibits.

[Statement of revenue and expense 1963 New Orleans central station marked Exhibit M-N.]

[Statement Revenue and Expense 1963, Richmond, marked Exhibit O-O.]

Q. In my question, Mr. MacDonald, I asked you whether you had done this reconstruction job on the basis of the use of 1962 figures, and you said Yes; is that correct?
A. That's correct.
[fol. 948] Q. At that time in 1963 the financial figures were not available, were they?
A. No, that's correct.
Q. Have they since become available?
A. They have since become available.
Q. Have you had a similar reconstruction job done using the 1963 figures?
A. I have. I have had it done by the Comptroller's staff following the same precise methods described by Price, Waterhouse & Co.
Q. Were the results any different from those when you employed the 1962 figures?
A. Slightly.
Q. To what extent?
A. We found 28 possible cities instead of 27. We found six of those again became deficit, eight in the marginal group, but this time we found there would be fourteen profitable offices instead of 13, the City of Miami having been added to the list.
Q. Do you have any knowledge or information, Mr. MacDonald, as to the unit costs of protection in cities where ADT is not the only source of supply as compared with cities where it happens to be the only such source?

[fol. 949] A. Yes. For the year 1966 the weighted per subscriber cost in cities where we are not the only source of supply amounted to $199. In the group of cities where we are the only source of central station supply the comparable unit cost was $241, an increase of 21 per cent.

Q. So the unit cost is higher in the cities where you have no other source of central station service, is that correct?

A. It would naturally be so, Counselor, for these cities are those in which a high volume of revenue is not possible. Where you do not have a high volume of revenue and you do have certain standby charges, unit costs have got to go up.

Q. What in your opinion, Mr. MacDonald, based upon your experience in financial matter, would be the effect of using prices obtained on an average in cities in which competitive central stations are encountered as a standard for prices in those cities of ADT's operation, where ADT is the only operator of a central station?

A. Since the costs of the latter group are 21 per cent higher than in the former, I think there could only [fol. 950] be one inevitable result, Counselor. You are going to have to sell the service at less than cost.

Q. There is another agreement in existence, is there not, to which ADT and the Rhode Island Electric Protective Company are parties?

A. Yes, there is.

Q. What is the situation with respect to that at this time so far as you know?

A. Once again each company is making overtures to the other, looking toward some sort of termination of these contracts, and I think within a reasonable space of time these can be brought to termination, too.

Mr. Fritz. I have no further questions of Mr. MacDonald.

The Court. Is there any cross-examination?

Mr. Fritz. I have omitted an exhibit. I had intended to ask Mr. MacDonald whether he had prepared a summary of the deficit offices in 1963 where ADT is the only source of central station service.

Q. This is it, is it not, Mr. MacDonald?

A. That is it.

Q. Does it represent the facts?

[fol. 951] A. It represents the facts.

The Court. Admitted.

[Table ADT summary of deficit offices marked Exhibit P-P.]

Q. Mr. MacDonald, I show you these two documents. One purports to represent the amount of advance service charge which is amortized, if I understand it. You tell me if that is correct on a city-by-city basis?

A. That is correct.

Q. And another set of documents for the year 1957 through 1963 showing the amount secured dollar-wise as compared with the MBR on a city basis, is that correct?

A. Yes, it is made from our computer runs.

The Court. Those tables are admitted.

[Analysis "Advance Service Charges", 1957, marked Exhibit Q-Q.]

[Amount secured dollar-wise 1957-1963 as compared with MBR on a city basis, marked Exhibit R-R.]

The Court. Is there any other testimony?

Mr. Fritz. I have no further questions.

The Court. Has the Government any questions?

Mr. Story. I have no questions.

Mr. McInerney. I have a few questions.

[fol. 925] Cross-examination.

By Mr. McInerney:

Q. Mr. MacDonald, I take it from your testimony you were an officer of ADT both before and after the Grinnell acquisition of the controlling stock in ADT, were you not?

A. Yes, sir.

Q. And would you as a result of that experience describe very briefly the difference before and after with respect to the amount of autonomy that the subsidiary had?

A. The amount of what?

Q. Autonomy, or freedom from parental control, if you will—freedom from the parent company.

Mr. Story. Your Honor, I object to that.

The Court. I don't quite understand what that means, and I sustain the objection.

Q. Did Grinnell make any change in the management of ADT as a result of its acquisition of the stock from Western Union?

A. None whatsoever.

Mr. Story. I object.

The Court. You may answer that question. What was the answer?

The Witness. None whatsoever.

[fol. 953] Q. Did it make any changes in the operations of ADT?

A. No, counselor. Grinnell did not know the operations of ADT. It relied strictly upon it officers to run the business.

Q. Well, you mentioned in your testimony that you were one of the principal negotiators of the so-called device sale agreement that was negotiated between the years 1946 and 1952?

A. Correct.

Q. Can you briefly describe the nature of those negotiations with respect to whether they were harmonious or acrimonious or what they were?

A. I would say they were acrimonious, at times. It was a most distinctly arm's-length negotiation extending occasionally to tooth-and-toe-nail.

Mr. Story. Your Honor, I am going to object to this.

The Court. Well, I don't know what you expect I am going to do about teeth and toe-nails.

Q. You mentioned in your testimony a hand-shake meeting sometime in the middle of 1952, and I would like to show you what has been marked JRG-69, which appears to be a memorandum with respect to such a meeting, signed [fol. 954] by you. Would you identify that for us, please?

A. Yes. That is the transcription I made of what transpired at that meeting shortly after its occurrence.

Q. And what was the date of that meeting again, please?

A. June 16, 1952. Transcribed on June 17th.

Q. Can you give us approximately, if you will, the date

on which you first learned that Grinnell had acquired or was about to acquire an interest in ADT?

A. That would be not earlier than May 1963.

Q. 1953.

A. 1953. I beg your pardon. Mr. Walter Marshall of Western Unic called Mr. Gaston down and told us about it. That was the first we knew.

Q. Had the acquisition taken place by that time?

A. No, but it was pending.

Q. In preparation for the negotiations that led to that handshake meeting, did you compute the approximate value of the devices concerning which the negotiations centered and, to refresh your recollection with respect to that, I would like to show you these sheets.

A. There were computations made under my direction. It bears a date of March 5, 1952, which I made in the midst of these negotiations and looking up to some [fol. 955] eventual settlement in which I sought to justify the value of the devices and what we might afford to pay for them.

Q. What did you conclude with respect to the replacement value of the devices?

A. I concluded not the replacement costs but the historic cost in place plus general and administrative expense loadings, all other usual loadings associated with a sale, plus a profit element, plus also an item for interest on installment payments would place the value on Grinnell's devices at close to $16,000,000.

Q. And that was as of what date?

A. That was as of 1951.

Q. And thereafter between that date in 1951 and the termination date of February 18, 1954, would the value of those devices have increased or decreased?

A. They would have increased.

Q. Why is that?

A. Well, in the first place, sprinkler supervisory and waterflow alarm service was just about the best selling service at that point of time. It was mushrooming prob- [fol. 956] ably under the influence of postwar building construction or whatnot. I don't know, but all I know is we sold more of it than anything else. The value would have been much higher at contract termination, 2/18/54.

Q. And if it was much higher in 1954, what would it be as of this date?

A. Oh, infinitely higher.

Q. Is that——

A. There hasn't been a year since 1954 that wage rates and the cost of living haven't gone upwards.

[fol. 957] Q. In attempting to compute the value of these devices, did you make a computation with respect to what Grinnell's price would be or Grinnell's costs, rather, would be, or were you told that by Grinnell? And may I, with respect to that, refer you to a note at the bottom of one of these pages?

A. The computation, as I recall, was a composite of two things. First, the values that had been given to us by Grinnell, together with our own knowledge of the reasonableness of those things. We have always had some sort of an understanding as to the relationship between Grinnell's costs and ADT's costs for this service.

Q. What is that relationship?

A. As here employed 91.8 per cent.

Q. And Grinnell's costs?

A. Costs equal to that of ADT of 98.8 per cent. That figure had been given to us by Grinnell some years earlier. I brought that figure up, I brought it in line with our own increases in plant for the ensuing years. Thus I arrived at what I believed to be a pretty fair historic cost as of 1951, the date I employed.

[fol. 958] Q. Did you make a comparison between what you believed the cost to be and what you believed Grinnell's receipts would be from a 25 per cent participation in the subscriber revenues for sprinkler supervisory waterflow alarm service?

A. Yes, I did. I did it not only on the basis of 25 per cent but I also employed several other percentages, so when we got into the negotiations I would be able to land on my feet, no matter what percentage we finally spoke of. I did it at 25 per cent, I did it at 20 per cent, I did it at 16 per cent and I did it at 17½ per cent.

Q. Did you conclude that the relationship between 17½ per cent or 20 per cent of these revenues and the replacement value was such that you could recommend to your

Board of Directors an agreement for the sale of those devices at either of those figures?

A. Yes, I did. As testified, my estimate of the reasonable worth of these devices in 1951 was almost $16 million. My projection of Grinnell's probable receipts from this business for a period of 20 years amounted to almost $13 million. I felt I could well justify this recommenda-
[fol. 959] tion to my Board of Directors.

Q. I show you a document which is purportedly signed by you, and is an extract of the Minutes of the Board of Directors of ADT. Would you give us the date of that, please, this extract of the minutes?

A. This is a Minute of the Board of Directors of ADT, held at 60 Hudson Street, which is the Western Union premises, at 11 o'clock on Wednesday, June 11, 1952.

Q. At that time and place did you receive authority to negotiate with the Grinnell Company for the Device Sale Agreement?

A. We were authorized by the Board to proceed with the negotiations, assuming device purchase payments not in excess of 20 per cent of collections.

Q. When you shook hands what was the percentage?

A. 17½ per cent. We settled within the proscription of the Board of Directors.

Q. Thereafter, was there approval of the 17½ per cent by the Board of Directors, and I show you the Minutes of the meeting, dated July 9, 1952.

A. Yes, there was.

Mr. McInerney. I would like to offer all those documents in evidence.

The Court. They are all received and are to
[fol. 960] be given separate numbers.

Q. You testified as of the end of 1963 the gross value of the equipment installed in subscribers' premises, according to the ADT books, was approximately $81 million, and that the replacement value would be higher than that.

A. Correct.

Q. In giving that testimony were you taking into account the value of the devices which Grinnell sold to ADT pursuant to the Device Sale Agreement?

A. No, counselor, that never had been established on our books. This was one of the objects of seeking a special tax ruling in Washington. As soon as the agreement was proposed, we agreed to it but only on condition that we would not have to go through the gymnastics of estimating what this whole value was going to amount to and off-setting it by a contingent liability on the other side. [fol. 961] We would have had to make some queer accounting adjustments 15 years from now, or whenever, if it were found we had not guessed right. There would be some questions, some gross questions concerning depreciation of this equipment. How was the Treasury going to allow you to depreciate a mere estimated figure? They allow you the historic costs. We had no knowledge, no precise way of ever finding out how much precisely to pay.

The Treasury, therefore, gave us a special ruling that said: you may charge as an expense, in lieu of depreciation allowance, or anything else, the precise amounts you paid to Grinnell annually. That is what we are doing. Hence the value of the sprinkler supervisory and waterflow alarm devices does not appear on the balance sheet and never has.

Mr. McInerney. Thank you very much, sir.

Mr. Story. Your Honor, I have two or three short questions.

Cross-examination.

By Mr. Story:

Q. Mr. McDonald, does the Grinnell Corporation have any of its officers or directors on the Board of the [fol. 962] American District Telegraph Company Board of Directors?

A. Oh, yes, sir, it does, four out of seven.

Q. How many?

A. Four out of seven.

Q. Is that the governing body of the American District Telegraph Company, the Board of Directors?

A. That is the majority.

Q. Do they appoint the officers?

A. Yes, they appoint the officers.

Q. They could fire the officers?

A. Certainly.

Q. Now this so-called sale of these devices, did the Internal Revenue Bureau of the United States buy this so-called sale?

Mr. Fritz. I object.

The Court. I don't understand what the question means. "buy" is a slang word which, I think, is not clear.

Mr. Story. It was a bad question. I will start over again.

Q. Is there a tax case pending at the present time in the Tax Court or the Court of Claims as to whether or not this was a sale of these devices by the Grinnell [fol. 963] Corporation to ADT?

A. Not from our standpoint.

Mr. Fritz. I object to this.

The Court. The objection is sustained. That won't affect me one bit.

Mr. Story. No further questions, your Honor.

The Court. All right. You are excused.

ROBERT J. FAHEY, Sworn

Direct Examination.

By Mr. Fritz, Jr.:

Q. Will you please state your name and home address?

A. Robert J. Fahey, 35 Ross Road, Belmont, Massachusetts.

Q. By who are you employed, Mr. Fahey?

A. Arthur D. Little, Incorporated, Cambridge, Mass.

Q. What is the business of that organization?

A. It is a research and consulting company, which was started in 1886 as a technical research organization. Over the years the line of services which it offers has been expanded to include economic research as well as scientific research.

Q. In what capacity are you employed?

A. I am employed as a Senior Associate in the Business Research Section of Arthur D. Little Company.

Q. For how long have you been in the employ of [fol. 964] Arthur D. Little Company?

A. I first joined the company in 1953, and except for two years in the Air Force I have been with them ever since.

Q. Have you engaged in market research or business research during that period of time?

A. Yes, during the entire period of my employment for the company, yes.

Q. Would you please state your educational background or experience before coming to Arthur D. Little?

A. I joined the company shortly after graduating from the Massachusetts Institute of Technology, School of Industrial Management, where I received a Bachelor of Science degree in Business and Engineering Administration.

Q. Could you briefly describe or list some of the business or market research projects in which you have been engaged while in the employ of Arthur D. Little?

A. Well, there have been a wide variety of projects carried out generally for the purposes of clients reaching business decisions which have generally been conducted for corporations in this country for the purpose of estimating market size and estimating market share, and the [fol. 965] kinds of decisions that have been involved relate to investment in new plans, the abandonment of existing businesses, possibly the acquisition of new companies, specifications of new proposed products, these kinds of decisions.

Q. Mr. Fahey, was Arthur D. Little approached by my law firm in 1961 and requested to conduct a market research study?

A. Yes. Sometime during April Mr. Harry D. Wiseman, Vice-President of Arthur D. Little, who is now in charge of our office in Zurich, was called down—

Q. Missouri?

A. Zurich, Switzerland. —was called down to the office of Bleakley, Platt, Schmidt, Hart and Fritz, and discussion ensued, after which we submitted a proposal to the law firm describing the general research effort to be conducted over the subsequent months.

Q. Were you apprised of the Government's contention

with respect to the relevant market and also as to the defendants' contentions as to the relevant market?

[fol. 966] A. We were aware of the Government's complaint and the relevant market defined within that complaint. We set out to examine the market for electric protection services, by which it was understood by us at that time to mean central station service, auxiliary services, proprietary services, local services, telephone answering services, for the purpose of protection.

Q. Do you include also in your listing of electrical protection services remote station or direct connected service?

A. Yes.

Q. Will you describe what Arthur D. Little decided to do by way of ascertaining the defendants' share of this electric protection market?

A. Well, we began in this first month of our effort by conducting a series of interviews with authorities in the field, people who had knowledge of the field by virtue of their own direct experience in the business, and so forth.

We, for example, interviewed some officers of insurance companies. We interviewed users of electric protection services. And then over the course of that month we defined a study of the market for electric [fol. 967] protection services, which was directed at defining the defendants' share of that market.

Now ordinarily in conducting a market study of this kind one has the option of going along certain lines as to whom to interview. This market, as we saw it, the market for electric protection services, is made up of a wide variety of using firms. That is to say, it includes retail establishments, wholesale establishments, manufacturing establishments and also institutions and possibly even Government customers or users.

Now in view of the fact there is something more than 2 million business establishments in the country, and in view of the fact the service is widely offered across the country, we elected to pursue the approach of interviewing suppliers of these services rather than the users. It was more managable from the research point of view.

Q. Did you define suppliers in any particular manner?

A supplier of service was what, for the purpose of your study?

A. Well, one goes through a set of stages where the definition becomes ever more precise. Basically, in set-
[fol. 968] ting up a population or field of people to interview, a list of potential interviewees, if you will, we took as supplier firms those firms which represented themselves as offering burglar alarm services, fire alarm services, in the Yellow Pages of directories within certain selected cities.

Now having made the basic decision that we would interview suppliers of these services, we still had the problem to cope with of a national market and a large number of small firms supplying some of the services.

The Court. If I understood you correctly, you thought from the point of view of the supplier that there was a number of different markets?

The Witness. I beg your pardon?

The Court. You understood from the point of view of the suppliers that there were a number of different markets? Were there not? A national suppliers' market? There was a number of local suppliers' markets?

The Witness. We recognized the possibility at the time.

The Court. As I understood your statement, you pro-
[fol. 969] ceeded, as you described it?

The Witness. No, sir. We chose a variety of areas for the purpose of sampling this national market without making any judgment as to whether there was a series of local markets or national markets.

The Court. You understood I was not talking about the consumer.

The Witness. Yes, sir.

The Court. As I understood your statement. you proceeded in certain cities to look at the Yellow Pages, is that right?

The Witness. Yes.

The Court. In that aspect, if you proceeded in Boston, you treated Boston as a market?

The Witness. We treated Boston really as part of a national market.

The Court. Part of a national market? I thought you

said you then treated or you looked at concerns which were in the national market. Didn't you say that?

The Witness. We were attempting to define——

The Court. Didn't you say that?

The Witness. I may have.

[fol. 970] The Court. I thought you did. Maybe I misunderstood you. I just wanted to point out that when you were looking at it from the point of view of the suppliers, you treated the situation as one with many potential kinds of markets.

The Witness. Well, I don't think I was.

The Court. I don't want to trick you. It is too easy.

Mr. Fritz, Jr. I think that we can perhaps develop this, sir.

Q. Mr. Fahey, will you tell me the method followed by Arthur D. Little in arriving at its market measurement, and will you start off and tell us if there was a sampling procedure established?

A. There was. As I said, we still had the problem before us of covering the national market for these services, and we chose the method of taking the so-called Standard Metropolitan Statistical Areas of the United States, as defined by the Census Bureau, the Department of Commerce.

Q. Would you tell us what such an area is?

A. Well, there is a technical definition, but basically a standard metropolitan statistical area is an area including a County with a central city of 50,000 popula-

[fol. 971] tion, or possibly twin cities with a possible 50,000 population, and such contiguous counties as are economically and socially dependent upon the city as to be integrated with it.

Q. Is this data which is in standard use in connection with market research projects?

A. Yes, it is commonly employed in market research.

Q. Do you happen to know how many of those standard areas there are in the country?

A. There were at the time of our study 212 standard metropolitan statistical areas with a total population of about 112 million. The total population of the country at that time, in the continent of the United States, was about 179 million.

Q. Did you proceed to select samples from amongst these two hundred and some odd standard metropolitan areas?

A. We did. The sample we chose was selected on an appropriate statistical basis to be representative of the three regions of the country: East, Central and West, and to include both cities in which ADT offered central station service and cities in which it did not. The actual sampling was conducted by Dr. Morris Gottlieb of our staff.

Q. I am not sure you mentioned how many of these [fol. 972] areas were selected for this sample purpose.

A. The end result was that we selected 20 such cities, 20 such areas, I should say, from among the 212 areas of the United States.

Q. Having selected those samples, what did you then proceed to do?

A. We then proceeded to take a census of the firms offering electric protection service within those cities. These are the selected cities that I referred to earlier.

We listed, using the Yellow Pages of the Telephone books from those cities, as a source, the firms that advertised electric protection services within those cities. There are certain listings that are commonly employed in the Yellow Pages of the Telephone book, such as burglar alarm service and fire alarm service systems, and that we used as a basis for selecting these.

Q. Is it often the case that there are several classified books sovering a single metropolitan area?

A. Yes. We went through the laborious process of taking all the counties within the standard metropolitan statistical area, as it is defined by the Census Bureau, and listing the post offices within those areas, and [fol. 973] then attempting to collect all the Yellow Pages from the included counties.

Q. As a result of that, you compiled a list, did you not, of persons holding themselves out as offering alarm service of one sort of another in those 20 standard metropolitan areas?

A. Yes, we did.

The Court. Off the record.

(Discussion off the record.)

The Court. Didn't he prepare a report telling all this?

Mr. Fritz, Jr. Actually, your Honor, I believe the printer just put his head in the door.

The Court. Why don't you get the report? I know how these things are done. I have had economists working with me and against me. I know Arthur D. Little and respect the company. At the same time, I think I know that this is ultimately not a question that the Arthur D. Little Company is going to solve.

Mr. Fritz, Jr. There are a few aspects of this that I would like to bring out.

The Court. Why don't you get the report in and ask him anything about the highlights?

[fol. 974] Mr. Fritz, Jr. May I offer the report?

The Court. Yes, of course.

Mr. Fritz, Jr. There are just a few aspects of this that I would like to cover nevertheless. May I see if it was the printer, sir?

The Court. Yes, surely. I am not surprised you did not know if it was the printer by his appearance. This is not the Middle Ages.

Mr. Fritz, Jr. He didn't look quite angry enough. Yes, your Honor, they are still warm. I think Mr. Fahey may be entitled to one copy (distributing copies to the Court and counsel).

The Court: Off the record.

(Discussion off the record.)

The Court. All right. I admit the report.

Mr. Fritz, Jr. Sir, is it my understanding that this report is admitted for all purposes, and that as far as my statisticians and sample designers are concerned—

The Court. If it is all explained in the report, as I assume it is.

Mr. Fritz, Jr. Yes, sir.

[fol. 975] The Court. Yes, surely. There is no advantage in going over, in question and answer form, what I assume is well foot-noted in the report or otherwise explained.

There is an explanation in the report of how you proceeded and how your associates proceeded?

The Witness. Yes, your Honor.

Q. Mr. Fahey, have you noticed whether there is among the appendices a statement with respect to the specific standard metropolitan areas which were included in the sample selection?

A. I believe they are included in Table C-1.

Q. Do you have the page?

A. It is page 26. Later in Appendix D there is a listing— I should say Appendix F, there is a listing of the counties, and these are organized according to the standard metropolitan statistical area.

Q. Mr. Fahey, in the course of this market study conducted by you, did you give consideration to the question of the market composition as well as to the question of the size and the defendants' share of the electic protection market? Did any information or data come to [fol. 976] you which bore on the question of market composition?

A. In this market study, we directed our attention to the defendant companies' share of the electric protection service market and that alone. We conducted two other efforts which were directed at the question of competition among several of the services included within this electric protection service market.

Q. Well, since the next witness will handle one of those, would you describe to me the interview program?

The Court. The interview program?

Mr. Fritz, Jr. The interview program.

Q. Will you describe the interview program conducted of the users, the ADT customers and user of electric protection service?

A. There were two such surveys conducted. The first one was conducted—well, they were both pilot efforts. The first one I will refer to was conducted among what we call new and lost customers of ADT, customers of ADT who during the first three months of 1961 had made a decision with respect to their electric service protection.

We took three classes of customers: those who had dis-

[fol. 977] continued their ADT service, those who were new customers of ADT of central station service, and those who were listed in a form that ADT uses to be filled out by their salesman as lost customers, that is lost to some competitive service.

We, through statistical methods, took all these firms from the ADT headquarters in New York and chose a sample of 300 firms of potential responders, 100 from each of those three classes, and then interviewed—we were able to interview 148. W eexpected that some of these firms we would not be able to reach. Some might have gone out of business, and so forth.

Q. Was that a telephone interviewing program?

A. This was a telephone interviewing program carried out by members of our staff with officers of the responding companies or others who participiated in the decision with respect to electric protection service purchases.

Q. Do you have in your possession one of the quesstionnaires used in conjunction with that survey?

A. I do, yes.

The Court. It is admitted.

[fol. 978] Q. Did you, Mr. Fahey, based upon your experience in conducting market research programs draw any conclusions from this interview or from these interview programs?

A. From this interview program as well as the second interview program, which we carried out, in Dubuque, which involved actual personal interviews with electric protection service users.

Q. You need not describe that one as the next witness will describe it in detail. You are familiar with the program?

A. Yes, I am. I concluded that individual users as they approach—user of protection services, as they approach their decision, approach it in a variety of ways. Some central station users were discovered in this telephone interview program considered a wide range of services in approaching their purchase decision. They considered by their own statements local alarm, for example, or auxiliary services, as they made their purchase decision.

Our telephone survey included people who had chosen local alarm, for example, or other forms of electric [fol. 979] protection service, accredited central station service, having considered central station service. There was one case that I recall where a drug store had changed ownership, and where one owner used local alarm and the other owner used central station service to protect the same premises against casualty.

Q. Did you discover alarm system users owning more than one location who used one form of service at a location and another at a different location?

A. Yes, we did.

The Court. Did you ever know of a man who was considering whether to buy a four-in-hand tie or a bow tie or a shirt which did not require any kind of necktie?

The Witness. A four-in-hand?

The Court. I am just pointing out to you—the fact that the customer considered three different possibilities does not prove that the three different possibilities constitute one market from the point of view of the antitrust laws.

The Witness. Yes, sir. I came to no precise conclusion about the percentage of other forms of electric protection service which compete with central station pro- [fol. 980] tection service. Nevertheless there was evidence that in certain instances as users approach the decision as to whether they want to buy electric protection service, what protection to buy, they solicited bids for several kinds of electrical protection service, and even went beyond that to secure bids from watch agencies, guards and watchmen, and certain responders considered insurance protection as providing an interchangeable service in combination with or instead of central station protection service.

The Court. Off the record.

(Discussion off the record.)

Q. Mr. Fahey, have you reached a conclusion as to the validity of the market asserted by the Government, i.e., a market consisting solely of accredited central station service?

A. Yes. I think so far as the economic workings are concerned in competition, effective competition is concerned, that it is an over-simplification.

Mr. Story. I did not hear that.

The Court. It is an over-simplification.

Mr. Story. I still did not hear.

The Court. It is an over-simplification. He is telling [fol. 981] me that if I am right the Supreme Court ought to deny the i.e.

Mr. Fritz, Jr. That is all for this witness, sir.

[fol. 982] Q. Perhaps you can explain to me why you find that to be an oversimplification? You apparently find something else present in the market.

A. Without being able to define it precisely, the precise percentages, I come to the conclusion that some portion of each of these other electric protection services,—and, indeed, some portion of the guard services, and even possibly—and we had evidence to indicate this,—some portion of insurance competes effectively central station service.

Cross-examination.

By Mr. Story:

Q. Mr. Fahey, it seems as though you conducted a very thorough survey of the protection needs of various customers throughout the United States. In connection with that survey, have you found any customers that used watchdogs to protect their premises?

A. I would have to go through the basic data of the 148 interviews. We didn't ask whether they were using watchdogs according to my best recollection.

Q. But you did inquire about watchmen, did you not?

A. Yes, sir.

[fol. 983] Q. Have you ever heard that anyone used a watchdog to protect their jewelry shop or a scrap metal yard?

A. No, I am not aware of it.

Q. During the course of your examination did you find that ADT had lost any of its central station pro-

tection subscribers to a customer who threw them out and used a watchdog?

A. No, sir.

Mr. Fritz, Jr. If it appears to me over the course of the evening that there may be something else that could be added to this, may I recall Mr. Fahey briefly?

The Court. Yes, but just let me indicate to you that I think I understand this kind of testimony best from the report itself, and having a very high opinion about this witness so far as I have seen him today, I am quite sure that there is in the text a sufficient explanation of what the reports cover.

Mr. Fritz, Jr. And may I have your leave to put a statement in the record tomorrow as to the author of certain portions of this and his qualifications?

The Court. Surely. If you want to add any Whose Who biographical information, you may do it.

[fols. 984-985] What is the defendant's best guess now as to the length of time to present the balance of the case.

Mr. Fritz, Sr. My guess is, provided airplanes bring everybody remaining, that I need, that I can probably finish tomorrow. I might misjudge, and I might have to ask your Honor for a little leeway.

The Court. Neither you nor a Senator of the United States can guarantee flights by air. We will adjourn until 10 o'clock tomorrow morning.

[Adjourned at 4 p.m., until Tuesday, June 23, 1964.]

[fol. 986] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 2785

[Title omitted]

Transcript of trial—June 23, 1964

[fol. 987] The Court. You may proceed.

Mr. Fritz. Your Honor, I have prepared and would like to submit to the Court this Statement Of The Main Issues To Which The Defendant Alarm Company's Documents Primarily Relate.

The Court. Thank you. It is received by the Court but is not an exhibit as such.

Mr. Fritz. Mr. Shultz prepared a tabulation showing what portion of any given national account ADT had and the service it rendered in each of some of the other locations. We have such a tabulation here. I must say to your Honor that it is not complete, but it is the most we could do up to this time, and I would like to get it in today.

The Court. It is admitted.

Mr. Fritz. I have also delivered to the Clerk the volume relating to the exhibit which your Honor left open yesterday.

The Court. Do you mean the description of the biographies of certain people?

Mr. Fritz. No, your Honor, a statement of the detailed work done on the reconstruction of the 1962 [fol. 988] figures with regard to divestiture.

The Court. The enlarged exhibit is received in evidence.

Mr. Fritz, Jr. With the Court's permission granted yesterday, may I introduce a biographical summary of the gentlemen who were responsible for the market study?

The Court. That may be added to the report as an exhibit. What is the number of the report, please?

The Clerk. XX.

The Court. All right, That is XX-1.

The Clerk. I'm sorry, it is WW.
The Court. WW-1.

(Biographical summary of Morris J. Gottlieb, Lester Frankel and Stefan Peters marked Defendants WW-1 and received in evidence.)

The Court. Is there any other testimony, or is there something that Mr. Story wants to say before the testimony is offered.

Mr. Story. Your Honor, I think as we left the record [fol. 989] yesterday Mr. Fritz had asked permission to recall Mr. Fahey in the event he deemed it necessary the first thing this morning.

The Court: I did not know that.

Mr. Story: It is in the record, your Honor. But at this moment what I want to do is to state on the record that the Government has now had an opportunity to read the survey conducted by Arthur D. Little Company and that we feel that the way that the survey was conducted it has absolutely no probative value, and we move to have it stricken from the record.

The Court: The motion is denied.

Mr. Story: Now, your Honor, there is one other thing that I would like to straighten out on the record. Your Honor will recall that yesterday the defendants offered into evidence several excerpts from the depositions, and at that time I suggested that we felt as though certain portions had been taken out of context, and that for that reason we wanted to either designate some more pages or put the entire depositions in.

I find that those excerpts have been marked by your [fol. 990] Clerk, and I would suggest, in order to straighten out the record, that the Clerk number——

The Court: Please don't suggest that the Clerk do it. I suggest that you do it.

Mr. Story: So that things will be straight in the record, I offer this suggestion. Otherwise, we would have to introduce into evidence the entire original transcripts, which your Honor has on file.

The Court: It is not part of the Clerk's function to do what you suggest. Now if you want to offer any additional parts of the exhibits, it is up to you.

Mr. Story: I want to offer into evidence at this time, your Honor, the entire transcripts rather than the excerpts.

The Court: All right. Is it opposed?

Mr. Story: What is that, sir?

The Court: I asked Mr. Fritz if it were opposed.

Mr. Fritz: I don't think so, your Honor.

The Court: Allowed.

Mr. Story: Lastly, your Honor, you requested [fol. 991] that the Government look over the diaries of Mr. Earl Smith. We have looked those over and have no objection to having those documents withdrawn from the record of the case.

The Court: Thank you. And I am sure Mr. Smith thanks you doubly.

ANDREW M. ROUSE, Sworn

Direct examination.

By Mr. Fritz, Jr.:

Q. Would you please state your name and home address?

A. Andrew M. Rouse, 60 Wilson's Lane, Needham, Mass.

Q. By whom are you employed, Mr. Rouse?

A. Arthur D. Little, Cambridge, Mass.

Q. In what capacity are you employed?

A. I am an Associate on the Business Research Staff.

Q. For how long have you been so employed?

A. Approximately six years.

The Court: Six months?

The Witness: Six years.

Q. Would you please briefly state your educational background, Mr. Rouse?

A. Bachelor of Arts degree from Franklin and Marshall College, a Bachelor of Laws degree from Columbia University and a Master of Business Administration [fol. 992] from Harvard University.

Q. Will you describe briefly the nature of the work you have done for Arthur D. Little over these past six years?

A. My work has been concerned largely with advising clients of Arthur D. Little in the solution of business

problems, particularly those concerned with marketing aspects of their organization.

The Court: Off the record.

(Discussion off the record.)

A. (Continuing) This work has included a large number of market studies directed at helping clients determine questions such as entry into markets, or questions surrounding the amount of investment to be given to various product development efforts, the withdrawal of products from markets, plant locations and things of this sort.

Q. In this connection did you have occasion to conduct consumer or user surveys?

A. Yes.

Q. Did you conduct such a survey on behalf of the defendant Alarm Companies in this case?

A. I did.

Q. Where was that survey conducted?

[fol. 993] A. In Dubuque, Iowa.

Q. Would you state briefly the purpose of the survey and the method by which it was carried out?

The Court: First, please tell me why you took Dubuque. The lady, I know, is well known. I don't know about the alarm system.

The Witness: The reason why Dubuque was selected, your Honor, was essentially by trial effort. We were working at the time with the possibility of determining what the market might be for protection services by looking at users. It is necessary in order to do this, within the budget and within a reasonable budget in a small city where there was central station protection available and where the city was a discrete enough unit industrially-speaking so there were not outlying areas that might confuse the question of what kind of protection was available.

Dubuque was one which met those requirements. It is a small city. It has very few outlying areas. And there is central station protection available.

The Court: Did you discuss the selection of

Dubuque with your client or did you do it quite [fol. 994] independently of your client?

The Witness: We discussed it with our client.

The Court: What did your client tell you about the area before you yourself went out there?

The Witness: They did not say. They did not tell us anything about it.

The Court: In discussion with your client did you talk about other possible cities besides Dubuque?

The Witness: Yes.

The Court: What other ones?

The Witness: We talked about the City of Chicago.

The Court: That does not measure up to what you said about Dubuque.

The Witness: There were various criteria applied. We would have ideally been in favor of doing it in a much larger city, but there were considerations which made it desirable to do it in a smaller city.

[fol. 995] The Court: What were the considerations that you and the client both explored as to why you discarded Chicago?

The Witness: Money.

The Court: What?

The Witness: Money, — the cost of doing it.

The Court: Is that the only consideration?

The Witness: Yes, I would say it was, sir. It was the only one I was familiar with.

The Court: I didn't mean you, but I meant the client as well.

The Witness: You will have to ask the client about that.

The Court: Did the client express to you any reasons?

The Witness: None that I can recall other than that.

The Court: What other cities did you talk about?

The Witness: We talked about Peoria, Illinois, I believe.

The Court: Why was that discarded?

The Witness: For much the same reason as Dubuque.

The Court: Why was it discarded?

The Witness: I am sorry. I think it was dis- [fol. 996] carded on our advice—on my advice.

The Court: Why?

The Witness: The area around Dubuque is a much more easily handled area from the point of view of interview,—consumer interviewing—than we thought Peoria would be.

The Court: What other cities did you consider?

The Witness: I am sorry. I don't recall any others.

The Court: I get the impression of a rather arbitrary selection, suggesting that everything which follows from the arbitrary selection is also arbitrary.

The Witness: Let me explain why. There is a background to this which we have not gone into yet which I think is important.

The question really in selecting a city, and the reason why it was selected relatively arbitrarily, was that it was desirable to find out whether the Sanborn maps—and I will go into what those were in a minute—which we had hoped to use as the medium for determining what buildings existed in a specific cities and what kind of protection devices were available to those buildings were usable [fol. 997] in any kind of user survey.

Now, the Sanborn maps are very complete maps which I believe Mr. Fritz will enter into evidence, or hope to enter into evidence which are used by insurance companies, prepared by the Sanborn Company for fire insurance companies primarily, to help fire insurance companies determine what the fire risk levels for given cities might be. These are very complete maps. They are block-by-block maps, showing each building within the block and all the fire protection devices available within each of those buildings.

We had hoped to use the Sanborn maps as the basis for determining what buildings should be looked at in any users' survey which we might use, but it was necessary first to determine whether the Sanborn maps were accurate. The Sanborn Company themselves admitted that the maps were only revised once every ten years. Well, in many cities, you see, the building that goes on in ten years, and so forth, might make them very inaccurate.

So the major purpose of doing any survey to begin with was to determine whether or not the [fol. 998] Sanborn maps were accurate.

The Court: And you took a city which is far from typical in connection with growth, didn't you?

The Witness: At the time I could not have answered that question, although I can now say that that is correct. It is not a typical city.

The Court: I could have said it with some confidence before I looked at it. I know enough about Dubuque, Iowa, and everybody else knows enough to know that the old lady is still an old lady.

The Witness: That may be so, sir. I didn't know that at the time.

The Court: You didn't.

The Witness: No, sir.

The Court: You don't have ordinary familiarity with the slang of the country?

The Witness: I would submit, Your Honor, that the slang of the country is not necessarily the fact.

The Court: It is more apt to be accurate than almost anything in estimating public opinion.

The Witness: You may be right.

Mr. Fritz: May I offer it?

[fol. 999] The Court: You may offer it. I think it has been pretty well discredited.

Mr. Fritz, Jr.: Two of the Sanborn maps.

[Two Sanborn maps of Dubuque, Ia. marked Exhibit Y-Y.]

Q. Mr. Rouse, these are maps covering the City of Dubuque, or portions thereof?

A. That's correct.

The Court: Received.

Q. Mr. Rouse, will you describe briefly the manner in which you carried out your survey?

A. We selected from among the Sanborn maps for the City of Dubuque nine of them intentionally, eight of them randomly, those areas which had to be covered.

The nine that were selected intentionally were selected because they were primarily commercial and industrial areas, and it was suspected that this was the area in which most of the electric protection would be found. The others were selected randomly.

We then prepared, together with Audits and Surveys, a consumers' surveying service, a questionnaire and instructions for interviewers, and with these we went to [fol. 1000] Dubuque. We used Audits and Surveys' interviewers who were residents in Dubuque for this purpose, and these people were thoroughly briefed by me before we started the survey.

Each one of them was given three Sanborn maps to cover over the period of time in which they were to do their interviewing, and their instructions were essentially that they were to interview each establishment, commercial or industrial establishments on those maps.

At the end of three days we had completed the seventeen maps, and I might add at the end of each day I reviewed the day's work with each of these people quite thoroughly. We then turned over the completed questionnaires to Audits and Surveys, who tabulated them.

Q. Mr. Rouse, how many commercial and industrial establishments are there in the City of Dubuque?

A. About eight hundred.

Q. Do you know how many of these establishments were——

A. Excuse me. That is commercial and industrial buildings, not establishments.

Q. Can you tell me how many of the owners or operators of these establishments were interviewed by your force?

[fol. 1001] A. About two hundred and fifty.

Q. Did you on the basis of information secured at the interviews prepare statements for the consumer showing the type of establishment and number of establishments using various forms of protection services?

A. I did.

Q. Do you have them with you?

A. I do.

Q. Did you prepare similar statements showing the size of establishments both in terms of employees and floor footage which used various types of systems?

A. I did.

Q. May I have those? Are these the materials which were used by your interviewers?

A. Yes.

The Court: Received.

[Materials used by Interviewers marked Exhibit Z-Z.]

Mr. Story: Your Honor, for the record, the Government objects to the introduction of these documents. I can't see that they have any probative value or materiality to the issues in this case.

The Court: Objection overruled.

[fol. 1002] Q. Was a computation made as to the percentage of establishments using electric protection services which used central station service?

A. It was.

Q. What was that percentage?

A. It was 23 per cent.

Q. ADT is the sole central station in Dubuque, is it not?

A. It is.

Q. Were the various establishments with respect to which information is set forth on the summaries similarly located from a geographic viewpoint?

A. Many of them, yes.

Q. Based upon your survey of Dubuque and also your past experience in conducting survey work, did you reach any conclusion as to whether there are similarly placed or similarly situated establishments using various forms of service?

A. As to Dubuque alone.

Q. Did you draw that conclusion?

A. As to Dubuque alone, yes.

Q. On the basis of your survey did you reach any conclusion as to whether in so far as that city is concerned [fol. 1003] central station service provided by an approved company comprises a market separate and apart from other forms of service?

A. I concluded that establishments similarly located—similarly situated—did in fact have different forms of protection services, including central station service but not exclusively central station service. Therefore, in establishments similarly located such as a warehouse, for example, it might have central station service while the warehouse in the same block might not but have other forms of electric protection.

Q. Did you reach a conclusion as to whether accredited

central station service in that city constitutes a separate and independent market?

A. Yes.

Q. What was that conclusion?

A. That it did not.

Q. Incidentally——

The Court: Is he testifying as somebody who graduated from a law school, or is he testifying as an Arthur D. Little employee, or is that supposed to be a question of fact or a question of law?

Q. Incidentally, did you or your organization submit to us an estimate as to the expense entailed in [fol. 1004] conducting a survey such as this throughout the United States?

A. We did.

Q. What would that survey have consisted of, and could you tell me what the estimate was?

A. If the survey was to have been a census it would have cost about a quarter of a million dollars. If it was to have been a sampled basis, rather than a census basis, it would have cost about $130,000.

Q. Thank you.

The Court: Is there anything else?

Mr. Story: Your Honor, the Government does not have any questions, but I would like to move to cut this witness' testimony from the record because I do not think it has any probative value.

The Court: "any" is a big word. I deny the motion.

[fol. 1005] LAWRENCE J. O'BRIEN, Sworn

By Mr. Fritz:

Q. Mr. O'Brien, would you state your full name and address, please?

A. Lawrence J. O'Brien, 25 Duryea Road, Upper Montclair, New Jersey.

Q. You are the president, are you not, of Defendant ADT in this action?

A. That's correct.

Q. How long have you been president?

A. One year—approximately one year.

Q. You had been associated in various capacities with ADT prior to that time, had you not?

A. That's right, I have been associated with ADT since 1947.

Q. Just briefly, what is your education and background?

A. I graduated from Georgetown University in 1935 and from the Fordham Evening Law School in 1940.

Q. Are you admitted to the bar of the State of New York?

A. I am.

Q. I understand that you have not engaged in general practice, is that correct?

A. That is correct.

[fol. 1006] Q. You also spent some time, I think, in the U. S. Army, did you not?

A. Following my graduation from Fordham Law School I spent five and a half years in the Infantry of the U. S. Army in World War II.

Q. You went in as a private?

A. And came out as a major.

Q. Also you have had some relatively short experience with IBM, have you not?

A. I spent five years as a salesman with IBM from 1935 to 1940, although I was carried on their rolls during the war.

Q. Just briefly, what were your respective positions with ADT from 1947 up to the time you became president about a year ago?

A. In the years from 1947 up to 1955 I engaged in market research work for the company as a director of market research. I acted in a public relations capacity on occasions, and I did general administrative work in assisting in the sales department for brief periods.

Q. Then did a time come when you took or were given the position of general sales manager of the company?

A. On January 1, 1955, the then sales manager, [fol. 1007] Mr. A. E. Smith, became unwell, and he took a leave of approximately three months, and I was placed in the position, with the title of General Manager of Sales Production, and on January 1, 1956,—incidentally Mr. Smith had the title of General Sales Manager and

Vice-president in Charge of Sales and Related Activities. In 1956, on January 1, I was named General Sales Manager.

Q. During this period, the president of the company was who?

A. The president of the company during this period, the period, roughly, from——

Q. 1951 up to the time you became president.

A. Well, the last ten years of that time I believe Mr. Edward Gaston was the president.

Q. Did I understand you to say that Mr. A. E. Smith was the vice-president?

A. Mr. A. E. Smith was named vice-president, I believe, on January 1, 1955, if my memory serves me, and with the title of vice-president in charge of sales and related activities, and he kept that title until the title was changed to Vice-President, International.

Q. Did you report to him as General Sales Manager—that is, did you report to Mr. Smith as vice-president in charge of sales?

[fol. 1008] A. Yes, sir.

Q. You took over, I think you said, fully on January 1, 1956, as general sales manager of the company, is that right?

A. That's right.

Q. What did you find the condition of the sales organization to be at that time?

A. The sales organization was in a rather chaotic condition. The company had grown and the load had become quite heavy, and the district sales managers had had almost an autonomous operation, and my particular assignment, as I saw it and as I understood it, was to bring this into refinement and makes a sales organization out of it.

Q. What did you find existed so far as contacts between the field sales representatives and the head office concerning closeness of contact and relay of information as to conditions in the field?

A. There was a dearth of this contact. Mr. Smith had a staff of several men. They had no particular assignment, and there was a certain degree of hit-or-miss attention paid physically out to the field.

Q. When you came in, what steps, if any, did you take in connection with the organization or reorganization of the sales department?

[fol. 1009] A. The first thing I did was to institute three positions of Assistants to the General Sales Manager. These men in effect were regional men.

One covered the eastern third of the United States, one the central third of the United States and one the western third of the United States.

The reason for this was to give more assistance to the district sales managers, to get them faster answers, and to accelerate the pace of sales of the business.

Q. Did you personally tour the country and outline to your district sales managers and their employees in the Sales Department the policies which you were about to inaugurate and initiate?

A. Yes, and in those early years I traveled as many as 21 weeks in the year, I know in one year, and sales supervision from the standpoint of the position in which I was in has to be constant, and when you are new at it, this organization had to get to know me and I had to get to know them, and this is a company where very few people come in from the outside and this was rather difficult at first.

Q. Did you also institute a new training program for people in the sales area?

[fol. 1010] A. I instituted a sales training program during which I brought in one man from each sales district in the United States into the New York executive offices, but this was very costly, and it consumed the time of too many people in the home office to pass on training and information to the man, and, frankly, I never followed up on that more than the first course.

We did, however, attempt to coordinate the training of a new sales trainee in one district with that of another.

Q. What was the situation as you found it so far as communications from the field to headquarters of information relating to salesmen's activities in competitive situations where they were attempting to secure business in the field, so far as reports were concerned?

A. There was a general dearth of communication in

almost every sector, and in respect to competitive activities there was virtually none.

Q. There has been offered in evidence here a form known as No. 701. Are you familiar with that?

A. Yes, sir.

[fol. 1011] Q. Known as a competition report?

A. Yes, sir.

Q. What if anything did you have to do with that?

A. The genesis of Form 701 was this: It was a form that was used by the Sales Manager in Cleveland. I found it there, frankly, and I brought it in, refined it, and in 1953 we issued the first to the field, although this one particular district was doing it.

The discipline of the organization being as it was we had——

The Court: Did you have any written instructions?

The Witness: Were there written instructions when the form was issued to the field? Yes, Your Honor.

The Court: Have you a copy of it?

Mr. Fritz: I have them here, sir.

The Court: May I just see them?

[fol. 1012] Q. I show you this group of documents, dated April 4, 1956 to November 23, 1960, and I ask you if they were all issued over your signature?

A. Yes, they were.

The Court: They are all admitted.

(Copies of letters from L. J. O'Brien, General Sales Manager to District Sales Managers, dated April 4, 1956, December 2, 1957, August 7, 1959, August 29, 1960 and November 23, 1960 re Form 701, marked Defendants' Exhibits A-E and received in evidence.)

Q. You say——

The Court: Just a moment please. May I see Form 701? Isn't that a separate form from these exhibits?

Mr. Fritz: Yes, your Honor.

The Court: Off the record.

(Discussion off the record.)

The Court: I have in front of me an exhibit known as Defendants' Exhibit F, which appears to be a Form 701. I am going to ask Mr. Fritz or somebody to give you a copy of that form so you will have it in front of you. In [fol. 1013] a moment I will put some questions to you.

Off the record.

(Discussion off the record.)

The Court: On the record.

Looking at Defendants' Exhibit F, Mr. O'Brien, I notice that it says "Form 701 (8-62)."

Mr. Fritz, in an off-the-record statement to me, assumes, as I assume, without either of us knowing, that "8-62" refers to August, 1962. Are we right in our assumption?

The Witness: I believe you are, your Honor.

The Court: All right.

The Witness: May I say this——

The Court: Well, wait a moment. I will allow you to say something in a minute. I would like to see the form which was used on April the 4th, 1956 or at some time near the time when these reports were begun.

The exhibit which is in front of me refers to competitive reports beginning with the date of April 4, 1956 and including dates in November, 1960, all of which are earlier in time than August, 1962.

Now do you want to say something, Mr. O'Brien?

The Witness: Your Honor, I believe from memory [fol. 1014] that these are essentially the same, but like most forms they are refined.

The Court: What you regard as essentially the same and what I regard as essentially the same might depend on what we thought to be the essence of the case.

Mr. Fritz: At this moment I do not have the forms——

The Court: I would like to show you what the Government has handed up to be but what is not an exhibit in the case, and ask you to look at that in comparison with Defendants' Exhibit F. I will now mark this as Court's Exhibit 1.

Mr. Story: Your Honor, that has been marked as a Government exhibit.

The Court: All right. It is part of Exhibit 191, page 1, so it does not have to be marked. Will you look at these

two? And you will see that they are different. I would like to know, Mr. O'Brien, which was the form which was utilized at the beginning, if either?

The Witness: To the best of my knowledge, your Honor, this latter one, I believe, was an earlier form.

[fol. 1015] The Court: That is the one which is Government's Exhibit 191? Off the record.

(Discussion off the record.)

The Witness: I believe this was the earliest form (indicating black folder).

The Court: Will you look at the name of the competitor shown on that?

The Witness: Merchants Police Signaling and Alarm Company.

The Court: In your experience, at the beginning, will you tell me whether all of the competitors named, so far as you are aware, in those reports were companies roughly of that size and nature?

The Witness: Of vast size and nature?

The Court: I did not use the word "vast." If you would like to put that in, that would satisfy the Government.

The Witness: I did not hear.

The Court: "That size and nature" is what I said.

The Witness: If I understand the question: Are all the companies covered in these reports——?

The Court: At the beginning.

[fol. 1016] The Witness: As this company here? No, sir.

The Court: Were there any cases of companies which did not supply automatic alarm systems?

The Witness: There were cases——

The Court: Were there?

The Witness: —— that did not, yes, sir, your Honor.

The Court: What percentage of the total of the reports covered such companies?

The Witness: I couldn't give you an estimate.

The Court: Five per cent?

The Witness: I couldn't give you an estimate.

The Court: You couldn't help? You mean you can't tell me whether it was five or 50 per cent?

The Witness: No, sir.

The Court: Do you think then that I think you are very familiar with this material?

The Witness: I was familiar, your Honor, with the issuance of this form.

The Court: Well, what I am asking you is: are you familiar with what the reports were when they came in?

The Witness: Each report?

The Court: No, as a total body.

[fol. 1017] The Witness: Yes.

The Court: I am familiar with the fact that 90 per cent of the witnesses who testify in this courtroom are men and not women. Haven't you got some kind of impression as to whether 90 per cent of the reports you received and looked at related to automatic alarm companies?

The Witness: I cannot say that.

The Court: You don't know?

The Witness: No, sir.

The Court: You are not sufficiently informed? Is that your testimony that you want me to believe?

The Witness: Your Honor——

The Court: Is that the testimony you want me to believe?

The Witness: All I could do would be to make an estimate, your Honor.

The Court: Your credibility is an issue in this case.

Q. Have you had any occasion, Mr. O'Brien, in the ordinary course of your work to make a comparison, that is, a statistical comparison as to the number of these competitive reports that refer to central station protection [fol. 1018] service as distinguished from local alarm, direct connected companies, automatic fire alarm companies?

A. I never made any such breakdown.

Q. And is that the reason why you are unable to give the Court a percentage?

A. It would be a pure estimate, and I have no real basis for it.

The Court: I said that I was able to estimate the number of men and the number of women who testified in my courtroom, and I tried to give you a sufficient lead to indicate that one need not make a head count in order to have a reliable impression.

Mr. Fritz: May I have just a second, please?

The Court: Yes.

Mr. Fritz: I would just like to call to your Honor's attention that there is an exhibit that was put through Mr. Gaston that touches on this problem with respect to all types of service.

The Court: I have no doubt that there are other sources. If I have to give relief in this case, I want to know about how fully informed the corporate officers are, and whether they should be by the corporation excluded [fol. 1019] from further employment on the ground of their failure adequately to follow the central business of the company and its degree of compliance with the anti-trust laws. I hope I have made that so abundantly clear that you will not be surprised by any of the terms of the decree.

Q. Mr. O'Brien, you said that you appointed three assistants to take care of three regions of the country, when you became sales manager, is that right?

A. That is right.

Q. What was the volume, as you saw it, of the reports of various kinds, contracts and associated papers, that came into your sales office during the time you were general sales manager?

A. The administrative force in the Sales Department was geared to handle approximately a hundred contracts a day, with all the collected papers. There was one occasion, while I was sales manager, at the end of a sales campaign, where they handled in excess of a thousand.

Q. Now did every document that came in from the field relating to sales come to your attention?

A. No, sir.

[fol. 1020] Q. How was that handled as a matter of distribution when it came into the office?

A. The three assistants to the general sales manager had certain delegated authority. When the mail came in the chief clerk directed it to these men, as she——well, as it fitted her procedures, and some of course went to my administrative assistants, which she felt were over and above what they might normally handle.

Q. Was it distributed among the three men representing the three regions that they covered?

A. That is correct.

Q. I take it——if I am not correct, you tell me——that with respect to what they regarded as important matters for your attention, they brought it to your attention, is that correct?

A. That is right.

Q. Was that generally the procedure during the five years that you were the general sales manager?

A. Yes, very much so, except that when I was traveling they might very well handle things that I would not see and bring them to fruition in my absence.

Q. What was the practice with respect to the 701s and the Form 400, which contained contract data? [fol. 1021] Did every one of those come to your attention while you were there?

A. No, they did not.

Q. How were they handled?

A. They were brought in, the Forms 701 were registered in a 701 Ledger Book, after they were detached from the papers, and they were accumulated thusly.

Q. From time to time, were some of these contract forms, the 701s brought to your attention?

A. Yes, sir.

Q. But not all?

A. That is correct.

Q. Are you familiar with the existence in the organization of what is known as the MBR?

A. The Minimum Basic Rates, yes, sir.

Q. Did you as sales manager have anything to do with the preparation of the Minimum Basic Rates, either for annual or advance service charges?

A. No, sir. The financial officers of the corporation handled the establishment of rates, although they consulted the sales department as to their thinking on it as part of the general procedure.

Q. Were you called upon from time to time, and did you express your views about certain of the prices and [fol. 1022] price increases?

A. Yes, sir, I did.

Q. From time to time, what was the position you took about some of the increases?

A. I undertook to take a very strong position with re-

spect to some of the price increases, and in fact that was one of the uses of the Form 701: to establish my position with respect to rate increases.

Q. What was that position?

A. On several occasions I took the position that we had reached price heights where we were not getting our prices.

Q. For what reason?

A. Price resistance in some instances and the fact that we became non-competitive.

Q. Now do you know how the MBR, that is the Minimum Basic Rates, were applied in the field under your direction by your sales representatives?

A. The District Sales Managers had a certain delegation of authority with respect to price.

Q. Do you know what that delegation of authority was?

A. The delegation of authority was that to meet a situation or to come down to a salable position in [fol. 1023] a given negotiation they could reduce the rate, drop below the Minimum Basic Rate, 80 per cent on the advance—60 per cent on the advance and 80 per cent on the other.

Q. Was this a delegation of authority to a District Sales Manager to make a general drop in price of those percentages, throughout a community, or was it just on an individual, isolated job, according to the circumstances of that job?

A. It was to give him an ability to operate, the sales manager to operate on his own. It was not meant as a general price decrease or a new rate.

Q. Was it so used at any time to your knowledge as a general price decrease, this delegation of authority?

A. Not to my knowledge.

Q. Now over the years have you had some difficulty in getting the sales force to use the Form 701 in all circumstances where they could not get the MBR?

A. Yes. We had a great deal of difficulty in getting this form used. Salesmen have an aversion to paper work. There is a lot of paper work in this particular field. And [fol. 1024] we had a great deal of difficulty in bringing them to a disciplined point where they would submit the Form 701.

Q. Now while you were sales manager, and in your travels throughout the country, discussing the matter of pricing with the District Sales Managers and the Sales Representatives, did you issue any instructions to them as to the manner in which prices should be applied in competitive situations?

A. I issued instructions to them verbally many, many times over as to what was the understanding of the organization: that under no circumstances could they come down below the price of a competitor.

Q. Did you personally instruct your sales people to that effect?

A. I personally instructed my sales people and the staff people of the sales organization to that effect, yes.

Q. On more than one occasion.

A. On a multitude of occasions.

Q. Now are you familiar with the increase in competition from the standpoint of the number of companies that have come into the field, say, since 1945 or thereabouts?

A. Roughly, there has been an increase, a sizable increase since the '40s.

[fol. 1025] Q. Do you know some of the companies that have come into the field with respect to different types of service?

A. Well, in the central station field there is the Robinson Alarm Company in Philadelphia, the Sentinel Alarm Company in Philadelphia, the LaRue International Company which just bought the Central Station Signal Company in New York City. Brinks has entered the field down in Tampa. Burns Brothers, the Burns Company in Chicago.

Q. Do you mean the Burns International Detective Agency?

A. The Burns Detective Agency.

Q. There is also the Sentinel Company in Philadelphia?

A. I mentioned the Sentinel Company in Philadelphia. The Owl—I mean the Circle Company in Indianapolis, Circle Alarm.

Q. How about competitors in the proprietary field?

A. We have them in the proprietary field. Westing——

Q. Westinghouse?

A. Westinghouse.

Q. Minneapolis?

A. Minneapolis-Hunnewell. In the direct connected field there is the Sterling Company, the Notifier Company.

[fol. 1026] Q. Diebold.

A. Diebold and Mosler Companies. And of course there is a new entrance into this, the telephone answering services, where alarms are being taken in to telephone answering services, and I have no estimate on the size of that.

Q. Well, that has been a development in recent years in almost all parts of the country, isn't that so?

A. That is correct.

Q. And then, of course, there are countless local alarm companies, are there not?

A. Very many.

Q. And what has your experience been since 1955 as to whether or not in fact these various types of services and these companies which you have mentioned have and do compete with your company in the sale of central station protective service?

A. They all compete in the sale of central station service, as I believe the Form 701 will indicate. This actually became one of the problems with the salesmen. We have weak salesmen and we have strong salesmen. Some of them do a poor job and some do a good job. We compete across the broad spectrum. They are entered in our [fol. 1027] Form 701, local, proprietary, and so forth.

Q. During 1955 and right down to the present time you have been familiar, have you not, with the system known as the National Account System?

A. Yes.

Q. Just briefly what is that?

A. The National Account System in the ADT Company comprises three men. These three men are in New York City. These are what we term the executive accounts. And they handle various big organizations whose home offices are there, and who desire to deal on a basis such as this with us.

[fol. 1028] Q. You say when their home offices are there. Do you know what divisions of their operations they have in their home office,—these big companies?

A. They have their insurance, their legal departments,

and so forth, that would normally process any contract, and therefore they desire to operate this way.

Q. Is there also security personnel located in headquarters?

A. Generally security personnel are in together with your insurance department, in most of the big corporations.

Q. Notwithstanding that arrangement, is it the fact that the particular location of a multi-location company or a national account is negotiated on a local basis, to begin with?

A. Very often it is.

Q. And is the price which is quoted and finally given to one of these companies for a particular location negotiated with respect to that particular location?

A. In this alarm business almost every job is custom-tailored, and the local man has to make the survey and has to price the job, and he then sends it in and the national account man in New York will take it to the national account department.

[fol. 1029] Q. Does your company have any blanket contracts with any national account covering all locations in a blanket way, or is the service negotiated more on a location-by-location basis?

A. The service is negotiated on a location-by-location basis.

Q. And is the price fixed?

A. Pardon me?

Q. And is the price so fixed?

A. On a location basis?

Q. Yes.

A. Correct. As a matter of fact, Federated Department Stores in 1958 insisted that we give them a discount across the board, and I brought Mr. Smith and Mr. Schultz to you to ask your opinion on this and to have you discuss it with us, and you told us and them that they could only do this if it was offered on a nationwide basis to every multiple location account.

I would like to say this in relation to these blanket contracts. There are several large corporations who insist upon one set contract as to several of the clauses, the boiler-plate clauses, of the contract.

Q. A master contract consisting of that—correct?
[fol. 1030] A. Their legal department wants to process it once and that's it, and that is established, and then as a location might be written, that will become a rider to the general contract.

Q. The rider constitutes a contract for the particular location, is that right?

A. Yes.

Q. Are you familiar, Mr. O'Brien, with the existence of the relationship between your company and the Automatic Fire Alarm Company of New York, and the manner in which the two companies operate?

A. Yes, sir.

Q. Just briefly, how do they operate?

A. They operate in that the Automatic Fire Alarm Company does the selling and the ADT Company the installing, maintaining, and servicing.

Q. The contracts are taken initially in the name of the Automatic Fire Alarm, are they not?

A. Yes, correct.

Q. And in some instances, relatively few, there is a reversal of position so that the Automatic Fire Alarm Company really renders the service, and ADT does not; is that correct?

A. Yes.

[fol. 1031] Q. And that relationship is the subject of a written agreement, is it not?

A. Yes.

Q. Mr. MacDonald testified yesterday that negotiations were in process for the termination of that agreement, is that correct?

A. Yes, they are. We have had discussions,—pardon me.

Q. Your company, of course, has been furnishing the devices actually used in the rendition of this service,—isn't that right—for the most part?

A. Right.

Q. And the service we are talking about being sprinkler supervisory service and waterflow alarm service,—right?

A. Right.

Q. So one of the questions involved in these negotiations is the question of compensation to you for the

devices or the property that you have in place in the subscriber's premises, is that correct?

A. Right.

Mr. Story. Your Honor, I hate to object, but these questions are just getting so leading, that I would like to state for the record that we do object to this type of question.

The Court: I think the last few questions have [fol. 1032] been more leading than is necessary.

Q. Well, is it the fact, Mr. O'Brien, that the ADT Company has a substantial number of devices in subscribers' premises under these contracts taken by the Automatic Fire Alarm Company and which are performing the service rendered by the ADT Company?

A. That is correct.

Q. And is that true in what locations,—what cities?

A. In the City of Boston, New York and Philadelphia.

Q. In connection with the negotiations for the termination of this contract, is there the consideration of continuing service to the subscribers?

A. That is a very serious consideration because the termination is just not a simple thing.

If the contracts are being serviced out of our central station, there would have to be facilities to take it if it was to be taken away and put into another central station. There are union involvements and the two separate union agreements of the workers involved, and so forth.

Q. What do you mean by two separate union agreements?

A. We are talking about the termination of the AFA-ADT. Both companies have agreements with local 3 of [fol. 1033] the International Brotherhood of Electrical Workers, and these contracts differ in their terms so that we have a very interested third party here who would of necessity have to be consulted as to how this would come out and how their workers would come out.

Mr. Story: Your Honor, I object to this line of questioning as being completely immaterial and irrelevant to any issues in this case.

The Court: Objection overruled.

Q. Mr. O'Brien, there has been reference made in one or two depositions and possibly more, to the instances and notably one in which it was alleged in Washington that there were meetings between Mr. Heisley and Mr. Bodley, representing ADT, and representatives of the Federal Engineering Co. of Washington claiming to involve an understanding that neither would solicit nor raid the other's accounts.

Mr. Story: Now, Your Honor, I am going to object again. I can't see how Mr. O'Brien here can testify or elucidate on the facts between two third parties.

The Court: He can certainly say he knows nothing about it, and, if he knows nothing about it, I don't [fol. 1034] see how you are affected.

Mr. Story: Very well, Your Honor.

Q. My question to you is, Mr. O'Brien, whether in the ordinary course of your work as general sales manager, the fact that such a claim is made by Mr. Heisley and Mr. Bodley came to your attention,—in the ordinary course of your business as general sales manager, did you know about it?

A. At no time in my time with the ADT Company——

The Court: That is a simple question. Did you know about it?

The Witness: No, sir.

The Court: All right.

Q. Did there come a time when it was brought to your attention?

A. No, sir.

The Court: Not even by your counsel after this case began?

Mr. Fritz: That is the point I was making.

The Court: Obviously.

Q. Wasn't there a time when I brought this to your attention after this case began and after the deposition was taken?

A. Yes. Yes.

[fol. 1035] Q. What did you do about it? Let me withdraw that for the moment.

At that time had Mr. Heisley and Mr. Bodley both passed away?

A. At the time of the bringing of the case?

Q. Yes.

A. I believe—I am not precise on the dates—that they both had passed away.

Q. At the time of the taking of the deposition it was true—right? When I told you about this, what did you do about it?

A. I brought in all of our salespeople to a sales meeting.

Q. By that you mean you brought in your district sales managers, did you not?

A. I brought my district sales managers, assistants to the general sales manager, and all of the staff people, and I brought them in and emphatically told them that this was not going to happen in this company.

Q. Assuming it was true. You didn't know whether it was true or not, is that right?

A. That's correct.

Q. Did you talk individually to these people on the occasion of their coming in to New York about this situation?

[fol. 1036] A. Continually.

The Court: Did you refer to the General Electric case in Philadelphia?

The Witness: Pardon me?

The Court: Did you refer to the General Electric case in Philadelphia?

Mr. Fritz: I don't think that had prominence at that time that it subsequently attained at the time of this meeting.

The Court: No. I asked him when he brought the men in—did you know about the General Electric case in Philadelphia?

The Witness: Yes, Your Honor.

The Court: Did you know about it at the time of the meeting with these men?

The Witness: I can't say.

The Court: When did you first hear about it?

The Witness: I followed it as it developed.

The Court: Then you must have known about it for a great many years if you really followed it as it developed. When did you first learn about it?

The Witness: Well, I learned about it, I suppose, in its terminal stages.

[fol. 1037] The Court: That is, when it became alarming?

The Witness: Your Honor, in my sixteen or seventeen years in this business I have never done a single thing nor condoned a single thing in respect to competitors in this business, and I think that's my reputation amongst the competitors, I believe.

Q. Mr. O'Brien, so far as the General Electric case is concerned, I suppose you knew what appeared in the newspapers from time to time, did you not?

A. Yes, sir.

Q. Did you know anything else about it beyond that?

A. No, sir.

Q. And in connection with this meeting that you had with your sales managers did you ask them to go back and examine the situation in their own areas, to see whether or not possibly there were any other situations such as that claimed to exist in Washington?

The Court: I am lost as to the time of this meeting. What year was it? Apparently it was after this case began against you—"you" meaning the company.

The Witness: Yes, your Honor.

[fol. 1038] The Court: Therefore, it must have been within the last three years.

The Witness: No, your Honor. This was prior. The onset of this case possibly was on its way.

Mr. Fritz: No. This was in the winter of 1962 that this meeting took place.

The Court: Are you testifying subject to cross-examination. I am asking the witness.

Mr. Fritz: I beg your pardon. I thought your Honor wanted a date.

The Court: No. I am really testing the witness.

Mr. Fritz: I am sorry, sir.

The Court: He doesn't seem to be very clear about when

it took place. He at one time said it was after this case began and at another time he hasn't been so sure.

Now, when was this meeting?

The Witness: This meeting was held—I would have to refresh my memory on it, your Honor.

The Court: You haven't got a very clear recollection of when it was held?

The Witness: I have a very clear recollection, your Honor, that I spoke very forcibly to these people.

[fol. 1039] The Court: I didn't ask you that. I will come to the force when I have a little more idea of the time and direction.

The Witness: It was in 1962.

The Court: And what, if anything, prompted the call of the meeting?

The Witness: I can't say whether the Heisley matter had been brought to my attention at that time, but something must have prompted it.

The Court: Outside of your recollection of your own force, do you remember anything else about what caused the meeting to take place, or what the discussion was?

The Witness: I have my handwritten notes of the meeting.

The Court: No. I am not interested at the moment in that. I want to know what is your recollection unstimulated by notes. All you have told me so far is that you spoke forcibly or with force.

The Witness: I brought in all of the district sales managers and told them that there had been certain compromis-

[fol. 1040] ing situations uncovered, and that I did not intend to be compromised by it and didn't think that they wanted to be compromised by it, and therefore they had to work with their men even more closely.

The Court: Is that all you can remember?

The Witness: I don't have any other memory of it.

The Court: Now if your counsel want to give you any notes or you can point out any notes which would now refresh your recollection, I am perfectly willing that you should look at them.

The Witness: I didn't bring my bag with me. It's over in the hotel.

Q. Does it refresh your recollection, Mr. O'Brien, if I were to say to you that I called this to your attention as a result of a deposition that was taken in Washington during the course of this case?

A. You brought it to my attention, Mr. Fritz, and I called the meeting, and I asked you to attend the meeting and stand up and tell these men the facts on this type of thing, and this is what took place at the meeting.

Q. And that is how it came about—right?

A. Yes, sir.

[fol. 1041] Q. As I understand it, Mr. O'Brien, the policy that you have imparted to your District Sales Managers personally with respect to price is that they shall not do more than meet the competitor's price, is that correct?

The Court: Well, now this is just the kind of leading question which under no circumstances elicits an answer that I would pay the slightest attention to. Any witness who cannot get the lead under those circumstances would be a very strange witness.

Q. Well, let me ask you this. Are the policies you described earlier in your testimony as having been imparted by you to your people the policies which are prevalent today?

A. Yes, they are very much so.

Mr. Fritz: That is all.

The Court: Mr. Story.

Mr. Story: Your Honor, I have a few questions, if your Honor will indulge me.

Cross-examination.

By Mr. Story:

Q. Mr. O'Brien, does your company engage in the furnishing of local burglar alarm service?

[fol. 1042] A. Yes, we do.

Q. Would you tell me what your average price per year per service charge would be on a local burglar alarm system?

A. No, I could not give you the average price.

Q. What do you consider a local burglar alarm system, sir?

A. A local burglar alarm system is a system on the premises where there is no signal taken in to a central station; in a telephone answering station, the alarm is local and——

The Court: Excuse me. I am not quite clear whether in your answer you are assuming that a local burglar alarm system is electrical. Are you assuming that?

The Witness: Electrical, yes.

Q. How long were you the sales manager, sir, of the American District Telegraph Company?

A. January 1, 1956.

Q. Until what date?

A. Until June 1, 1962.

Q. And over that vast period of time you are not able to tell this Court what an average monthly service charge for local burglar alarm would be?

[fol. 1043] A. I would like to point out, Mr. Story, that in 1960 I had the additional duties of Secretary-Counsel as well as general sales manager, for a two-year period there, and to assimilate a great deal of detailed knowledge, I was really unable to do proper justice to any one—to either of the two assignments, so I do have that difficulty.

Q. But are you trying to tell us, Mr. O'Brien, that you had this service to sell and you cannot tell us what an average yearly service charge would be for local alarm?

A. I cannot.

Q. Would it be a hundred dollars a year?

A. It would be in excess of that.

Q. Sir, do you know at the present time how many central station protection service subscribers your company has?

A. Roughly 70-odd thousand.

Q. Has your company from time to time tried to determine what the average would be of revenue from annual service charges that your subscribers are paying your company for central station protection service?

A. I think, Mr. Story, they would have the averages

[fol. 1044] on every service, but I do not have this in my head, and I cannot give you your answer.

Q. Does the number $696 a year refresh your recollection, that that is the average payment to your company for service charges for your central station protection customers?

A. I do not have that off-hand in my mind, no.

Q. As a sales manager weren't you ever interested in that type of information?

A. As a sales manager I was interested in every type of information, but during my tenure as sales manager our sales forces grew from 166 men to 220 men when I left that assignment, which was a very sizable growth, and these particular statististics I do not have in my head.

Q. Mr. O'Brien, have you had occasion to read any of the depositions that were taken in this matter by your counsel?

A. I have but I have not had an opportunity to absorb all of the data in this case because it has been so voluminous, and my work and my assignment as of today is a very full one, and it is quite difficult for me to absorb all of the data which we have.

Q. In the course of reading these local alarm deposi-[fol. 1045] tions, sir, did you get any impression as to what your competitors were charging per year for local alarm annual service charges?

Mr. Fritz: I object to the form of the question.

The Court: Sustained. I don't know whether you are arguing to me or not, but this is not really the best way to argue to me, Mr. Story.

Mr. Story: I am not trying to argue with you, Your Honor.

The Court: I did not say "with me;" I said "to me."

Mr. Story: Your Honor, we have a sales manager here that has no idea at all as to what he charges for one of the services.

The Court: Mr. Story, that observation may properly or improperly be made at the time of argument at the end of the case but does not belong during the examination.

Q. Mr. O'Brien, at the time you looked at these deposi-

tions did you know that they had been sealed by this Court?

Mr. Fritz: I object to this.

The Court: The objection is sustained. It has [fol. 1046] nothing to do with the direct examination and has nothing to do with anything else as far as I can tell.

Q. Mr. O'Brien, you mentioned briefly an agreement that you had with the Automatic Fire Alarm Company in three or four cities. What were those three or four cities?

A. Boston, New York and Philadelphia.

Q. What about Charlestown, Massachusetts?

A. I don't know anything about Charlestown.

The Court: Charlestown, Massachusetts? Is that not part of Boston?

Mr. Story: Yes, Your Honor.

The Court: Well, isn't it covered then in the answer?

Mr. Story: Very well, Your Honor.

Q. By the terms of those agreements what types of protection service is the Automatic Fire Alarm Company allowed to perform in the City of Boston?

Mr. Fritz: I object to that.

The Court: Sustained.

Q. Mr. O'Brien, is your company, the American District Telegraph Company, allowed under the terms of these agreements about which you testified to perform all [fol. 1047] types of central station protection service in the City of Boston today.

Mr. Fritz: The same objection.

The Court: Sustained for the same reason. Expert as Mr. O'Brien may be as a salesman or as an officer, he is not the document itself, which speaks for itself.

Mr. Story: Your Honor is sustaining the objection based on the fact that it is not the best evidence, I take it?

The Court: I sustain it on the ground the document is a constitutive operative legal obligation. It is not a question of the best evidence. It is a question of the only evidence.

Q. Mr. O'Brien, I hand you what has been marked as Government's Exhibit 139 and I ask you whether or not you have ever seen that document before?

A. I believe that I have. I believe my initials are on that. They are a little illegible.

Q. Are those your initials on it, sir?

A. Those are my initials.

Q. And does this exhibit, Government's Exhibit 139, deal with competition in Washington, D.C.?

Mr. Fritz: I object on the ground the document [fol. 1048] speaks for itself.

The Court: Well, that is, I assume, not a contract but is a report.

Mr. Story: It is a report to Mr. O'Brien.

The Court: Yes. The report is not a constitutive document. That is a very different matter from the document having its legal significance in its own terms. That is a document which is admissible and relevant in regard to the nature of reports given. With respect to that, the recipient of the document or the sender of the document may give an interpretation on the basis of his own experience and use of the document.

Mr. Story: Your Honor, the Government in showing this to Mr. O'Brien, who has testified extensively about——

The Court: I said you may use it. You do not have to persuade me further. You can only talk me out of it.

Mr. Story: I hope that I won't do that.

The Court: All right.

Q. Mr. O'Brien, would you read the third paragraph of this document and tell this Court whether or not that [fol. 1049] document does not reveal or strongly indicate that something is afoot down in Washington, D.C.?

Mr. Fritz: I object to the form of the question and to counsel's characterization.

The Court: "Something afoot" does not mean something we can identify afoot. It merely means there is something going on. It is rather colorful language. Mr. Story may think he is addressing a jury instead of a rather cold-blooded Judge.

Mr. Story: I'm sorry, Your Honor. I will rephrase the question.

Q. Would you read the third paragraph of that document, sir, and tell this Court whether or not there is not an indication there that your representatives in Washington, D.C. were meeting regularly with your competitors down there, and then give us the year.

A. Is this the second paragraph or the third paragraph?

Q. The third paragraph.

A. "In Washington, D.C., Federal Engineering continues to be very active and a constant 'thorn in our side.' When they are in competition with us they quote rates about 50% below our minimum basic rates. In a few [fol. 1050] cases where we have been competing for prestige accounts, such as Woodward and Lothrop, Emerson Research Laboratories, Applied Physics Laboratories, Inc., etc., they have gone as low as 40% of our minimum basic rates. While they deny it, we know that on occasion they attempt to raid some of our better accounts. In recent months I have become better acquainted with Mr. Brosnan and he knows that we consider his company's price policies and raiding policies as being quite unwise. Admittedly the situation is somewhat out of hand here at present as regards price cutting, but I feel that we have made some progress within the past few weeks in the direction of proving to our competitor that nobody but the prospect can hope to gain from a continuation of this practice. It had definitely reached the point where we had to meet the issues squarely on a few occasions in order to bring about a clear realization on the part of our competitor that we were not going to be satisfied to 'play second fiddle' on every competitive negotiation."

Q. What is the year of that report?

A. Pardon me?

Q. What is the date of that document?

[fol. 1051] A. September 14, 1956.

Q. You read this document and initialed it, I think you testified. Didn't that, based on what you testified in your direct examination, reveal that your Washington repre-

sentatives were violating your policy of getting together with your competitors?

Mr. Fritz: I object to the form of the question.

The Court: Well, I overrule the objection. Did it reveal that?

The Witness: Your Honor——

The Court: Did it reveal that?

The Witness: It revealed that he was out of order, yes, Your Honor.

Q. Did you call Mr. Hisley to your headquarters and take any action?

A. I can't recall the precise occasion, but on one occasion I went down to Washington personally to spend three hours with Mr. Hisley in a hotel room on things similar to this kind of writing. Mr. Hisley is dead now and——

The Court: De mortui de nisi bonum.

Q. Did you object to——

[fol. 1052] Mr. Fritz: Just a moment. Had the witness finished?

The Court: You do not want to cast any reflections? Is that what you have in mind?

The Witness: Well, no, Your Honor.

The Court: Well, go ahead.

The Witness: This particular gentleman had a habit of writing this type of thing, and it was continuous with him. I had a great deal of difficulty with this particular sales manager. There isn't any question about it.

Q. Did you object to him writing documents such as this?

A. I objected to the whole practice, Mr. Story.

Q. Did you object to him writing documents such as this which would end up in your file or did you object to him talking to his competitor? Which one?

A. I objected to the practice of his talking to a competitor or in any other way dealing with them. I have never dealt with competitors in this industry. I know only about three of them personally and I have met two

of those only once, and I asked this of the people who worked under me.

[fol. 1053] The Court: Well, maybe you do not mean to leave this as I think you have left it at the moment. As I understand it you knew you talked with him but you did not discipline him; is that right?

The Witness: This was in 1956, Your Honor. I can't recall my precise handling of this precise situation.

The Court: I am just telling you how you have left the testimony. Is that the way you mean to leave it?

The Witness: I did not discipline him.

Mr. Story: I have no further questions, Your Honor.

The Court: All right. Are you through with him?

Mr. Fritz: That is all, sir.

The Court: We will take a recess for 15 minutes.

(Recess.)

[fol. 1054] Mr. Story: May I recall Mr. O'Brien, Your Honor? I have a few questions that I overlooked.

The Court: Yes, if he is still here.

Mr. Conkling: Your Honor, the witness will be here in a moment. He stepped outside.

The Court: All right. He was excused, so naturally he is not here.

Mr. Story: I saw him in the hall just a moment ago.

The Court: Relax. Will you come back on the stand for what Mr. Story says are one or two questions.

L. J. O'Brien, Resumed

Cross-examination.

By Mr. Story, Continued:

Q. Mr. O'Brien, during your direct examination you testified at length about your instructions to all of your sales department personnel, that they were to meet competitors' prices but never to beat them, is that correct?

A. Correct.

[fol. 1055] Q. I hand you, sir, a document which has been marked as Government Exhibit 213 and I ask you whether or not you have ever seen that document?

A. I have.

Q. To whom is that document addressed?

A. This is addressed to Mr. L. J. O'Brien, General Manager of Sales Production, dated December 29, 1955.

Q. And from whom is this memorandum?

A. From the President, Mr. E. Gaston.

Q. Now, sir, I refer you specifically to the third paragraph and I ask you whether or not Mr. Gaston's position with relation to meeting the competitors' prices was the same as yours at that time?

Mr. Fritz: I object. I don't think this witness can testify about what somebody else's position was.

The Court: I think that is right. The objection is valid.

Q. Mr. O'Brien, would you read to us the third paragraph?

The Court: I am quite able to read it, if that is what you are asking him to do. You can ask him a question [fol. 1056] but you cannot ask him to read an exhibit which is in evidence.

Q. Mr. O'Brien, in connection with your company's bidding for R. H. Macy Company of Paramus, New Jersey, did you receive instructions from the President of the American District Telegraph Company that you had, and I quote, "my approval to cut the price as drastically as you wish to get the job"? Do you recall that communication from the President to you?

A. I signified that I had seen this letter, yes.

Q. And it did come from your President?

A. Yes.

Q. Did you tell the President of your company that that was against all instructions that you had passed on to your field representatives?

Mr. Fritz: I object to that on the ground that that is Mr. Story's interpretation.

The Court: I believe the question is argumentative, and if Mr. Story thinks I don't get the point he is mistaken.

Mr. Story: I just wanted to bring out that point, Your Honor. I have finished my cross-examination.

The Court: You are excused.

[fol. 1057] Mr. Fritz: Well, I wanted to ask this question, Your Honor.

Redirect examination.

By Mr. Fritz:

Q. You have seen this document that Mr. Story showed you at this moment?

A. Yes.

Q. It is addressed to you?

A. Yes.

Q. Do you know whether or not you actually saw it at the time it was issued in December of 1955?

A. Well, when I first saw this letter recently in this case——

Q. I called it to your attention, did I not?

A. You called it to my attention and I told you then that this had happened before I became sales manager, and this transaction had been concluded a month after I became sales manager. Now Mr. Gaston spoke to me about going up to see Mr. Fahey.

Q. The gentleman mentioned in this memorandum?

A. The gentleman mentioned in the letter. I have never met Mr. Fahey. I cannot recreate the circumstances [fol. 1058] as to what else I was involved in that kept me from meeting Mr. Fahey, but I was sales manager with 13 districts and a large number of men, and I don't know what took me away from seeing Mr. Fahey.

Q. Do you remember seeing this letter at the time?

A. My initials are on the form and I must have seen it.

Q. What interpretation did you put on this statement that Mr. Story read to you that "you have my approval to cut the price as drastically as you wish to get the job?"

Mr. Story: I object to the question, Your Honor.

The Court: Overruled.

A. I would assume that it would mean that I would do it within the bounds of my own policies in respect to meeting competition. This happens to be between the President and his brother. I cannot recall in my mind the details of the negotiation as it went along. This was prior to my taking over as sales manager. Mr. Smith

was sales manager then. And then, I believe, that job was concluded in the month of February, which would be one month after I became sales manager.

[fol. 1059] Q. But was that your interpretation of this language as you have stated it?

A. Mr. Gaston knew that I would not go below—that this was my policy, and that I would never condone going below a competitor's price.

Mr. Fritz: That is all.

The Court: You are excused. The next witness for the defendants, please.

Mr. Fritz: Mr. Drew.

THOMAS P. DREW, Sworn

Direct examination.

By Mr. Fritz:

Q. Would you state your full name and address, sir?

A. Thomas P. Drew, 45 Gainsboro Road, Scarsdale, New York.

Q. Mr. Drew, what position do you hold with the American Fire Alarm Company of Delaware, a named defendant in this case?

A. Automatic Fire Alarm.

Q. Automatic Fire Alarm.

A. I am the president.

Q. And is that a holding company?

A. Yes, it is.

Q. Are there subsidiaries of that company?

[fol. 1060] A. Yes.

Q. What are they?

A. The Automatic Fire Alarm Company, which is a New York corporation, the Automatic Fire Alarm Company, the New York company, owns Reeves Electrical Company, and also owns the Automatic Building, Incorporated, which is a New Jersey corporation.

Q. Do you hold office in each of those named corporation?

A. I do.

Q. What office is that?

A. President.

Q. How long have you occupied the position that you have just described, approximately?

A. Well, of Delaware, since 1948; of New York, since 1948; of Reeves, since 1948, and the Building Company was formed about a year and a half ago, and I have been President of it since its formation.

Q. Now is the Automatic Fire Alarm Company of New York an operating company which furnishes protective service?

A. Yes.

Q. Where does it operate?

[fol. 1061] A. New York, Boston and Philadelphia.

Q. What kind of service does it furnish?

A. Sprinkler services and fire alarm services, automatic fire alarm services.

Q. When you say "sprinkler services" I assume you mean sprinkler supervisory and waterflow alarm services, is that correct?

A. That is correct.

Q. And how is that service rendered in the cities you indicated?

A. We make an installation within the subscriber's premises, attaching devices to sprinkler systems, connecting those devices to transmitters. The transmitters are connected to our central station over either leased telephone wires, or wires which we own, and the central station office, of course, operates to send any signals to the fire department.

Q. Some of the sprinkler supervisory and waterflow alarm service, however, is performed in conjunction with ADT, is it not?

A. That is correct.

Q. How is that done?

A. We solicit a contract. We hand it over to the [fol. 1062] American District Telegraph Company, and they elect whether or not to operate it. If they elect not to operate it, it then becomes what has been called in this court a reverse position contract, and we operate it, reversing the position more or less with ADT.

Q. In connection with that arrangement between your company, and by that I mean Automatic Fire Alarm Com-

pany of New York, and ADT, when you negotiate the contract with the subscriber, is there any arrangement of the price in advance between your company and ADT or do you determine the price alone?

A. There is no arrangement. Automatic determines the price.

Q. Now do you have, as has been testified for ADT, two types of breakdown to your service charges, the annual service and the advance service charges?

A. Yes.

Q. How are they determined, just briefly?

A. They are determined by an examination of our financial statements. They are based on our costs, our labor rates, the cost of materials, overhead, the cost of operating the central station.

[fol. 1063] Q. Does your company recover through its advance service charges the cost of equipment installed on the subscriber's premises?

A. Would you repeat that?

Q. Does your company recover in its advance service charges the cost of the equipment located on its subscriber's premises?

A. No.

[fol. 1064] Q. Do you have any figures that would indicate the relationship between those two for any number of years?

A. Yes, for the past three years the advance service charge—this is an average—has amounted to between 48 to 55 per cent of the direct labor and direct material costs without any overhead or anything like that in it.

Q. Do you have on your company books at the present time as an asset equipment located on subscribers' premises?

A. Yes.

Q. And what is the amount of that, if you know?

A. About $3,000,000.

Q. Is that on the basis of original cost?

A. Yes.

Q. In your opinion, if it were based upon reproduction costs, would it be greater?

A. Much greater.

Q. Do you put out a document or a guide of any kind with regard to the prices for your service?

A. You mean price list?

Q. Yes.

A. Yes, we have a price list.

[fol. 1065] Q. What is the distribution of that?

A. To our sales force and any other interested executives.

The Court: Any other what?

The Witness: Interested executives.

The Court: You mean of your own company?

The Witness: Within the company.

The Court: Your own company?

The Witness: Within the company, yes.

Q. You don't distribute it to the public generally?

A. Not generally, but if anyone asked for it we would give it to them.

The Court: Anyone?

The Witness: Practically.

The Court: A competitor?

The Witness: I doubt that, but customers we believe are entitled to them. I wouldn't pull one out of my pocket and give it to a competitor, no.

The Court: Under circumstances where you give it to a customer, do you give it under any express obligation on the customer's part not to distribute it or hand it to anyone else?

The Witness: No.

[fol. 1066] Q. Is this a usual thing, to give a company price list to a customer, Mr. Drew?

A. It is very rare.

The Court: You mean usually in his company. I understand now. I thought you were asking me a general question.

Mr. Fritz: No, I am sorry. I meant: Is it his usual practice.

The Witness: It is very rare.

Q. Are you familiar with the use which is made of this price guide or price list by your sales force in the field in these cities where you operate?

A. Yes.

Q. How is it used?

A. They use it to calculate a price after they have determined the number of connections which will be required for the installation of the interior system.

Q. According to your experience, do your salespeople always get the price that is named in the list?

A. No.

Q. What are the factors that account for that?

A. Competition.

Q. Do you have any established procedures or practice or policy in your company with respect to pricing [fol. 1067] as related to competitors and competitive situations?

A. No, we don't have any basic percentages or anything like that to work with, no.

Q. Do you have any policy that you have passed on to your salespeople as to how they should act?

A. Yes.

Q. What is it?

A. Our policy is to get more than the competitor.

Q. Do you have any policy——

A. If it is at all possible.

Q. I beg your pardon?

A. If it is at all possible to get more than the competitor.

Q. Have you any expressed policy for your salespeople on the subject of not cutting a competitor's prices?

A. Oh, absolutely.

Q. Have you personally conveyed that to your salespeople?

A. Absolutely.

Q. Orally or in writing?

A. Orally.

Q. Frequently?

A. All the time.

The Court: Are you responsible personally for the continued employment of people engaging in sales, [fol. 1068] or is someone else at an intermediate level between you and the salesmen responsible for the continued employment of salesmen?

The Witness: We have a sales manager in New York, sir, a vice-president in Philadelphia, a vice-president in Boston, and you might say that the four of us supervise a sales force of I believe it is 13 people.

The Court: Have you ever either individually or with the group of men that you have described, participated in any disciplinary action of any kind with respect to any salesman in regard to any policy of meeting or beating competitors' prices?

The Witness: We have never had to, sir.

The Court: I didn't ask you that.

The Witness: Well, we haven't, then.

Q. Have you consciously, that is, to your knowledge, taken on any contracts at a price that was not profitable?

A. Consciously, no.

Q. Have you had contracts that turned out to be non-profitable?

A. Yes.

The Court: Non-profitable?

[fol. 1069] Mr. Fritz: Yes.

The Witness: Yes.

Q. I suppose that was the result of a poor guess, so to speak—right?

A. That's just about it.

Q. You have competitors in your field of protection service in these cities that we have mentioned, have you not?

A. Yes.

Q. Who are they?

A. In Boston there is the Call Company. There is the Central Station Signals and Central Office Alarms in New York. In Philadelphia there is the Robinson Electronic Company, the Sentinel Company, and the Owl Company.

The Court: Before you go on, have you listed all the competitors?

The Witness: I think so,—central office competitors.

The Court: I didn't ask you that.

The Witness: Well, I haven't——

The Court: Nor was the question addressed to you in those terms.

The Witness: I have listed the central office [fol. 1070] competitors.

Q. Are there any other competitors that you know of?
A. There are local burglar alarm, local fire alarm, people.

The Court: The question is: Are there any other competitors that you know? What is your view of that under oath?
The Witness: In New York, Boston and Philadelphia, we are in the central office business, and we do not pay much attention to anyone outside of the central office business.

Q. Central Station Signals Company up to very recently was owned, was it not, by a man by the name of Mr. McDowell, Mr. Drew?
A. He was one of the owners.
Q. That recently was sold to a company by the name of LaRue, I believe, is that correct?
A. That is correct.
Q. The deposition in this case, however, for Central Station Signals Company was that of Mr. James McDowell, and in that deposition he says at one place that on two occasions between 1952 and 1962, you — by that I [fol. 1071] mean your New York Company — engaged in price-cutting.
Now, on the assumption that he meant that you were engaged in undercutting him and waging that type of procedure against him, I want to put this question to you: Did you do that?
A. No.
Q. At any time during that period?
A. No.

Mr. Fritz: That is all.
The Court: Is there any cross-examination of Mr. Drew?
Mr. Story: Yes, Your Honor. I have just a few questions.

Cross-examination.

By Mr. Story:

Q. Mr. Drew, as I understand it, your company calculates or formulates your prices for your installation charges by an average cost of what it took to put in a certain number of protection units the year previous; is that right?

A. Not quite, sir.

Q. Would you explain that to me, sir?

A. We look at our financial statement and we see [fol. 1072] whether we are holding ground or not, and, if we aren't holding ground, we will examine our labor costs in the several different activities, our other costs, and determine through a rather practical method as to whether or not we should or should not raise our prices. We take all costs into consideration.

Q. In that connection does your company attempt to ascertain how much it costs your company to install a unit of a certain type of protection service?

A. Not per unit as much as per installation. We have a cost of direct labor and direct material on every job we install. So we know how much that costs us in direct labor and direct material.

Q. Does your company get its direct labor and direct material out of each installation?

A. We have a record on every installation we have ever made.

Mr. Fritz: I object to the form of the question. I think the two gentlemen are passing in the night. I don't think the witness understood the question.

The Court: I think that is correct. The answer is struck, because I believe it was not genuinely intended as a response to the question put.

[fol. 1073] Q. Does your company, sir, attempt to get out of each of its installations your direct labor cost and your direct material cost?

A. Do we—— Would you repeat that again, please?

The Court: Do you try to recoup your out-of-pocket expenses?

The Witness: Are you referring to the advance service charge?

The Court: I am indeed, sir.

A. We do not try to get back our out-of-pocket expenses, no. We do not.

Q. That was not my question. Do you try to get your direct labor cost and your direct material cost of it?

A. We do not try to get our direct labor costs and our direct material costs out of the advance service charge, no.

Q. Well, tell us, sir: How do you formulate these installation charges? You say you have a price formula or something? How do you arrive at those?

A. In the first place we don't have any installation charge.

The Court: No, but suppose you answer the question. How do you arrive at it—by guess? By some rule of thumb? By some more precise calculation? What is your method?

[fol. 1074] The Witness: The advance service charge was originally and still is 100 per cent of the annual service charge. It is an arbitrary figure.

The Court: So it is always 100 per cent of the annual service charge?

The Witness: On sprinkler work, yes.

The Court: Now, how do you arrive at the annual service charge?

The Witness: By taking our costs, all of our costs, and putting together, and, if we are dropping below where we think we should be, we will increase all prices maybe 5 per cent, 7 per cent.

The Court: I must have misunderstood you because I understood you to say that your annual service charge is based on your costs; is that right?

The Witness: All of our charges, sir, are based on our costs of operations.

The Court: It must allow something additional for profit. You are not eleemosynary institution.

The Witness: Oh, yes, we try to make a little profit, sir.

The Court: Well, what is the profit if you have one?

The Witness: There isn't any exact formula.

[fol. 1075] The Court: You mean the annual service charge is cost plus what you can get from the market?

The Witness: No.

The Court: Well, that is what I understand.

The Witness: No. We take our financial statements, and, if we are dropping down, we will say to ourselves, "Well, we perhaps need a price increase."

Now, we examine our costs to see if they are high. If they are high, we will try to reduce the cost in that department. Otherwise, we have to have a price increase to keep our profits up to the level we desire.

The Court: If I were a professor at the Harvard School of Business Administration stead of a lowly district judge, is this what you would tell me is the way you go about fixing your prices?

The Witness: I am sorry, sir, but that is.

The Court: Have you any graduates of the Harvard School of Business Administration in your shop?

The Witness: Sir——

The Court: Have you?

The Witness: Have I any what?

The Court: Any graduates of the Harvard School of Business Administration in your offices?

[fol. 1076] The Witness: No, we don't.

The Court: Of any other first-rate school of business administration?

The Witness: I don't think we do.

The Court: You mean to say you still fix prices as you would in the days of Queen Victoria?

The Witness: Well, I don't know how she fixed them. But I do try to make it as effective as possible.

The Court: Nothing that is even allegedly scientific?

The Witness: Not at all, sir. I couldn't even graduate from high school.

The Court: I am not interested in whether you could. You can hire people who graduate from high school. You look as though you could pay the bill.

The Witness: I can't very well be scientific.

The Court: Well, you can hire Mr. Fritz. You can also hire a graduate of a school of business administration as well as the graduate of a law school, but you don't try to; is that right?

The Witness: Oh, no, sir, we do try to be very accurate and fair in our charges and prices.

The Court: I am not saying you are fair or unfair. [fol. 1077] I quite agree that people who act unscientifically may turn out to be much fairer than people who act logically and rationally. Fairness is a state of mind and attitude. It isn't a pure question of statistical competence.

What I am trying to find out is this: Are you telling me that as large an enterprise as this, once closely related to a public utility and not now very far removed from a public utility status, doesn't do anything whatsoever to try to introduce a system of rationality into price-fixing?

The Witness: Well, sir, we believe——

The Court: Is that your testimony?

The Witness: We believe it is very rational. It works.

The Court: You believe in a wise man instead of a wise rule?

The Witness: No. It works.

The Court: Well, that is what I say.

The Witness: Yes.

The Court: You believe in the Karji at the gate or whatever you call him. In this case I suppose it is the bargainer.

The Witness: I don't recognize that.

[fol. 1078] The Court: It is an Arab custom by which men achieve justice, not by following any rules but by allowing the wise man sitting at the gate to decide how cases should be decided.

As I understand it, you illustrate the first half of President Lowell's famous citation, "The old is for the arts and the new is for the professional", and you are in the old is for the arts: fixing the prices on the basis of what you and the market can stand in your view?

The Witness: Oh, I didn't say that.

The Court: You and the market?

The Witness: Oh—well, no. We fix our prices to make what we consider a fair profit.

The Court: As an art and not as a science?

The Witness: That's right.

The Court: Well, I understand that is what you said.

Q. Mr. Drew, how many salesmen does your company employ?

A. Thirteen.

Q. In what areas are they employed?

A. New York, Boston and Philadelphia.

Q. And each one of these salesmen employ the same means of pricing the job as you have described here this [fol. 1079] morning?

A. No, they have the price list.

Q. Oh, we have a price list now?

A. We always did.

The Court: There has never been any doubt about that. As a matter of fact, that came up clearly on the direct examination. The problem is whether this price list represents anything but wisdom. Apparently it represents wisdom and not knowledge.

Q. You mentioned some of your competitors. You do have central station competitors in the three cities in which your company operates?

A. Yes.

Q. Do your competitors, as a usual practice, charge an installation charge and an annual service charge such as your company charges?

A. They have a charge similar to our advance service charge, I believe. I don't know whether they call it installation charge or not.

The Court: May I just point out something by way of a general observation and not as a final ruling in this case at all?

[fol. 1080] And you may agree the analogy is extremely far-fetched. I shouldn't be at all surprised if you think that.

When the Government first moved into the area of regulating labor relations they had to deal with a great many employers who followed principles of general discretion without records and without assigned reasons in connection with the hiring and firing of employees. Over a long period of time those employers had found that method of doing business very satisfactory because they had wise foremen and wise superintendents.

Then when Congress enacted the National Labor Relations Act and set up rather stiff standards with respect to so-called unfair labor practices in which persons and

corporations who were alleged to have discriminated against employees by having joined a union or otherwise exercised rights of freedom of association in labor relations, those companies found it very hard to meet a charge or a complaint filed by an employee because they couldn't point to any scientific standards that they had followed [fol. 1081] and a rational system, and every time a charge was made against them, these wise employers were stuck with the fact that they couldn't point to anything except their unexplained and nonrational—I didn't say irrational—nonrational wisdom, and again and again these companies, perhaps undeservedly, were unable to meet the burden borne by the complaining party who said, "You have dismissed me on a discriminatory basis and all you can tell me is that you have acted wisely."

Now, in a sense, what you are getting into in the whole field of economics regulation, antitrust law and other law, is this: When you act in an unexplained, nonrational manner, without any logic that can be explained objectively, you may find that in this welfare state world in which we live you are the victim of a Procrusteam bed.

No charge for this statement.

Mr. Story: The Government has no further questions, Your Honor.

The Court: All right.

[fol. 1082] JOHN A. MAHONEY, Sworn

By Mr. Fritz, Jr.:

Q. Would you please state your name and home address?

A. John A. Mahoney, 376 Prospect St., East Orange, New Jersey.

Q. You are the auditor and secretary of the Holmes Company, are you not?

A. I am.

Q. For how long have you held that position?

A. Secretary since 1932; auditor since 1938.

Q. Mr. Mahoney, I am going to show you one of the Government's exhibits in this case. It is Government Exhibit 236. It is one of our annual reports for the year 1960. Do you see there a statement to the effect that

the Holmes Company made a profit on its installation work in the year 1960?

A. Yes.

Q. There are similar statements to that contained in other annual reports, are there not?

A. That's correct.

Q. The same statement is made or the same general statement is made in the 1961 annual report?

A. That's right.

[fol. 1083] Q. Will you tell me how it is that that profit is computed? Now, I understand or believe that you are more familiar with the 1961 figures. Perhaps I ought to go back to those. Do you recall what profit was reported for the year 1961?

A. Yes. In the stockholders' report for 1961 we reflected a profit of $217,000 in the text of that report.

Q. During that year what did you receive or bill to subscribers in the form of installation charges?

A. Approximately $1,400,000.

Q. What did you deduct from the $1,400,000 in order to arrive at the figure of $217,000 profit on installation work?

A. We deducted certain elements of cost which we charged to the installation work on subscribers' premises, which were completed during the year 1961.

Q. Can you itemize those cost items which are deducted?

A. Yes. Those items of cost represented mainly what we refer to as direct labor charges of our Construction Department employees, also direct supervision expense connected with those Construction Department employees. There were also items of material costs. That item [fol. 1084] of material cost is what we call "unrecoverable material".

Q. What do you mean by unrecoverable material?

A. That is material that we would be unable to recover at the time the subscribers discontinued services or moved to another location.

Q. That is equipment that you would abandon?

A. That is the equipment that is abandoned, yes, on the premises.

Q. Tell me: Are any deductions made in arriving at that profit for matters such as general overhead or

executive salaries, or matters such as that? Is there any allocation of those expenses made in the computation of that profit?

A. No. For example, there are various fringe benefits that apply directly to the Construction Department employees themselves which amount to approximately $100,000 in that period, which are not charged off to the installation costs applicable to those jobs. And those fringe benefits are mainly provisions for employees' pensions, the amount that the company pays in connection with Old Age benefits, Unemployment insurance, sickness [fol. 1085] and accident benefits under the company's plan for employees' pensions, disability and death benefits.

Q. And other simliar matters?

A. And other similar matters.

Q. There are certain situations, is it not so, where the installation charge does cover all or part of recoverable items of equipment?

A. Yes. In a few items, not of what we might call costly material, where the material that we capitalize is of a costly nature, we do include in the estimated cost of the job a portion of that material cost.

Q. You mentioned capitalizing. What do you do with your recoverable equipment? You capitalize that?

A. Yes. The equipment that we capitalize is charged, of course, to fixed capital account and is included in our balance sheet under an asset account.

Q. In that year of 1961, where you made $217,000 profit on installation work according to your annual report, can you tell me how much recoverable equipment was capitalized or new additions to that account?

A. Yes. There was $667,000 worth of equipment that was capitalized and charged to our station equipment account.

[fol. 1086] Q. I'm sorry. I think I spoke while you were speaking, and I am afraid that figure may have been lost. Would you repeat it?

A. The amount of recoverable equipment which we classified as fixed capital and which is listed on our balance sheet as station equipment amounted to $667,000.

[fol. 1087] Q. It is a fact, is it not, that the account re-

flecting the value of subscribers' equipment is designated Station Equipment?

A. That is correct.

Q. And that is separate and apart from your Central Station Equipment and is confined solely to subscribers' plants?

A. That is the equipment on the subscribers' premises, yes.

Q. Approximately what part of the capitalized recoverable equipment has been covered by installation charges paid by subscribers in terms of percentage if you can give it to us that way?

A. We have estimated that it is approximately 25 per cent.

Q. Can you tell me the amount in that Station Equipment account as of the end of the past year?

A. At the end of 1963 I believe the Station Equipment——

The Court: Is this all worked out in a memorandum?

Mr. Fritz, Jr.: No, sir, I don't believe it is. I will not be much longer. I will be very brief.

A. (Continuing) At the end of 1963 the amount of [fol. 1088] our Station Equipment listed on the balance sheet amounts to $5,443,751.

Q. That is original cost, is it not?

A. That is the original cost.

Q. Based on your experience with current prices, are you able to estimate the replacement or reproduction cost of such equipment?

A. Well, it would be merely a rough estimate, but on account of the rise in material prices over the past ten or fifteen years we estimate that would amount to between 7½ and 8 million dollars.

Q. That is simply for the materials and that does not take into account anything such as the labor entailed?

A. That is the material costs of those particular items.

The Court: Less depreciation?

The Witness: This is the original cost.

Mr. Fritz, Jr.: This is original cost.

The Court: He was talking about reproduction cost a moment ago. Weren't you?

The Witness: Well, he asked——

The Court: Is that what you were giving a figure on?

[fol. 1089] The Witness: He said reproduction cost. I assumed he meant to reproduce that plant new.

The Court: Without depreciation?

The Witness: Without depreciation.

The Court: It is highly artificial business. I don't know why I should spend two seconds on that figure and I don't know why you want me to. I am not going to.

Q. There is one other question I would like to ask and it is this: How did it come about you referred to profit on installation work and you deduct in computing that profit only certain items of cost? Is this a practice which comes to the Holmes Company as a result of its prior affiliation with a utility?

The Court: Oh, my, do you mean that the Holmes Company has all the errors of an ancient utility?

Mr. Fritz, Jr.: No, sir. This form of accounting, Your Honor, as to the value or profit on installation work, is descended from the Uniform System of Accounts.

The Court: So there is all the built-in error of the utility business?

Mr. Fritz, Jr.: The fact is we are establishing [fol. 1090] here that that profit is not in fact a profit, sir.

The Court: You agree it is a highly artificial thing having nothing to do with reality, having been invented by lawyers for the purpose of persuading the Supreme Court, which had a different doctrine than the one which now prevails in the Supreme Court. Is that substantially right?

The Witness: That is right. Of course, we have, as Mr. Fritz mentioned, followed the methods employed by the Telephone Company over the years.

The Court: Yes.

Mr. Fritz, Jr.: Thank you.

The Court: Is there any cross-examination?

Mr. Morrison: No questions, Your Honor.

The Court: All right. You are excused. Is there any other testimony from the defendants?

Mr. Williams: Dr. Markham, please.

JESSE WILLIAM MARKHAM, Sworn

Direct examination.

By Mr. Williams:

Q. Will you state your full name and address, please, for the record, sir?

A. Jesse William Markham, 139 Broadmead Road, [fol. 1091] Princeton, New Jersey.

Q. Dr. Markham, were you retained as a consultant to Arthur D. Little, Incorporated?

A. Yes.

Q. Have you had occasion in the course of that retention to investigate certain business affairs of the American District Telegraph Company?

A. Yes, sir, I have.

Q. Doctor, will you describe briefly for us your professional background and your educational background?

A. Well, I received my AB degree from the University of Richmond, Virginia, in 1941. 1941 to 1942 I was in the School of Higher Studies at Johns Hopkins before entering the United States Navy. I returned to Harvard University in 1945 where I received the AM and Ph.D. degrees in their Department of Economics.

The Court: As quickly as all that?

The Witness: I did not indicate, I do not believe, Your Honor, when I received the degrees.

The Court: I thought you were talking about in 1945. I thought that was just incredible.

The Witness: Well, if I may complete the [fol. 1092] record, I received the AM degree, sir, in 1947 and the Ph. degree in 1949.

The Court: Even that is pretty quick.

Q. Doctor, could you describe briefly to us the general areas of your education? That is, have you concentrated in any particular area of business?

A. Yes. I have concentrated in that area of economics known as industrial organization and concerned primarily with economic analyses and economic theories relating to public policy, or, more particularly antitrust policy, with

measures of monopoly in markets, with indicia of workable competition.

The Court: Did you work with Professors Mason, Chamberlain, Kayser, et al?

The Witness: They were either my classmates, professors or peers, sir.

Q. During the course of your professional life, Doctor, have you held any Government positions connected with the field you have just described?

A. Yes, I have. I have been a consultant to the Tennessee Valley Authority. I have been Chief Economist of the United States Federal Trade Commission, 1953-1955. [fol. 1093] I have been United States Delegate to OEEC, now the OECD, and as United States Delegate to a group of experts on restrictive business practices.

The Court: Are you the gentleman whose foreign ventures I interfered with by setting this case for prompt trial?

The Witness: I am not sure I was the gentleman you had in mind.

The Court: I did not have you in mind, but I hope Mr. Fritz had someone in mind.

The Witness: Yes.

Q. I take it, Doctor, you are also the author of numerous articles on this general subject and its more wide-ranging implications?

A. I have written a number of books and I guess numerous articles on this subject, yes, sir.

Q. You said a moment ago that you have had occasion to study some of the affairs of the American District Telegraph Company. Could you describe to us briefly the nature of the studies you have undertaken and the purpose of them?

A. Well——

The Court: By the way, is your study in writing as a report?

[fol. 1094] The Witness: Sir?

The Court: Is your study in writing as a report?

The Witness: No, sir, I have not written any report, Your Honor. My study has been of evidence already

presented in the course of this trial in the record, certain documents which I assume are in the record, but were put together by my fellow workers at the Arthur D. Little Company, and a few records that——

The Court: I take it that what you mean is that you took into account the report of Arthur D. Little Company and you, therefore, took into account such subsidiary documents as they necessarily took into account?

The Witness: That is correct, sir.

The Court: I don't want to have Mr. Story rising here to say you took into account something that is not before the Court.

The Witness: All right.

Mr. Story: At this time I would like to know whether he is giving a legal opinion under the antitrust laws or an economic opinion?

[fol. 1095] The Court: Well, if you can tell me the difference then maybe I will be able to make a ruling.

Mr. Story: I don't know the difference, Your Honor. I thought maybe he might.

A. (Continuing) The purpose of this study, Mr. Williams, has been to satisfy in my own mind as consulting expert which of what seems to me at least superficially to be two conflicting allegations made by plaintiff with respect to ADT.

Q. What are those, in your mind, conflicting allegations, sir?

A. Well, as you read a portion of the Government's pre-trial brief——

The Court: That is not before me for adjudication. I really don't want to hear that. That is plainly argument. To object, and even validly object, to the Government's brief is a function of an opposing brief and of argument from the counsel table. It is not properly dealt with from the witness box. I would be very glad to hear anything that Dr. Markham wishes to say with respect to his examination of the exhibits and the like but not with re-

[fol. 1096] spect to the Government's brief.

Mr. Williams: Well, this is a very minor point, Your Honor.

The Court: I did not know whether you were leading

into a piece by piece, paragraph by paragraph, sentence by sentence analysis of Mr. Story's magnum opus or magnae opae.

Mr. Williams: I don't think it will be necessary for us to do that, Your Honor.

Q. Dr. Markham, are you familiar with the term Minimum Basic Rates" or MBR as it has been used in this case?

A. Yes, I believe I am. It has been defined as that printed price list that is sent out by the company to its various salesmen setting forth the standard price in terms of initial and additional units that might go in one of the central stations or other operations or electrical services. It is, I assume, very close to a printed price list for any seller of industrial products, such as a printed price list that is disseminated by textile companies, steel companies and by others.

[fol. 1097] Q. Does the dissemination of such a list of anticipated or hoped-for prices necessarily indicate the degree or effectiveness of competition?

Mr. Story: I object to the question, Your Honor.

The Court: I don't think it is a question which an economist can answer from his expert knowledge.

Mr. Williams: Perhaps I can rephrase it, Your Honor.

The Court: I am quite willing to have him give his expert opinion. If you want him to give me a paragraph or three pages of expert opinion, let him go ahead and give it to me. I don't object.

Mr. Williams: I think, Your Honor, that that is what I am attempting to do.

The Court: Why don't you let him give me the lecture? I am ready for the full treatment.

[fol. 1098] Dr. Markham, perhaps the Court has suggested a method that would be of more utility. Rather than my attempting to elicit the information that you have prepared, perhaps it would be best if you could state the details of your examination of the evidence in this case and the conclusions that you draw therefrom.

A. Well, I have examined the tabulations that have been presented. One of them particularly that I have gone over rather carefully is Exhibit F-79, which is a tabula-

tion of all of the various transactions that ADT has had in the years 1957 through, I believe, 1963, broken down as to whether or not the company was able to get actual rates equal to MBR, under MBR, had to cut its price under the Minimum Basic Rate, or whether it got something in excess of the Minimum Basic Rate.

There is no way of determining precisely the share of business ADT—well, the share of business that ADT receives less than the minimum Basic Rate for simply because there are not dollar figures attached to all of these individual items that appear in this particular tabulation.

However, a simple percentage based on sheer [fol. 1099] numbers of the items that appear in this tabulation shows that it does have to go below or it does go below the Minimum Basic Rate in over one-third of all the transactions that it does.

The Court: One-third by dollars or one-third by volume, or what are you talking about?

The Witness: One-third by number of business transactions unweighted by dollars. The most interesting figure, which you have anticipated, Your Honor, is one in which you would be able to get at the dollar value of this amount of business.

We have been able to make some rough approximation, or at least to put some lower limit on what we think the business is that is done at less than MBR.

A tabulation, as a sample, based on the month of March, 1961 shows that on the whole contracts entered into that involve $1,000 or more tend to more frequently be negotiated at less than the MBR than transactions that fall under $1,000.

Inquiry into the firm of ADT, inquiry into the impressions or the knowledge of people such as Mr. McDonald, who has testified here, also strongly suggests, if it does [fol. 1100] not prove, that on the whole small additions to systems, which are included in this list, and may be just one other electrical device attached to another door or window, due to a plant expansion, that on the whole these are more likely to be at the Minimum Basic Rate than would an initial contract.

What I am really saying is that the preponderance of evidence, at least to me, an economist, is that the dollar

percentage would be something in excess of 35.3 per cent, based on the sheer number of transactions simply because the larger ones tend to go at MBR more frequently than do the small contracts, and also extensions tend to go at 100 per cent of MBR somewhat more frequently than initial contracts.

Well, it does seem to me that this has some bearing on the degree of competition that ADT confronts when it goes into the various markets in which it does business.

The Court: Various markets?

The Witness: In the various markets, that is correct, the metropolitan markets in which it does business.

[fol. 1101] The Court: You have no difficulty as an economist in finding many different markets, do you?

The Witness: I do not, no, sir.

The Court: And the market power of the company varies according to the market under consideration?

The Witness: I am certain that it must.

The Court: Are you going to deal with that?

The Witness: I am going to deal with that only in terms of two categories of markets, Your Honor.

The construction that I put, however, on the fact that perhaps from 35 to 40 per cent of the total business done by the company is done at less than MBR, it does suggest that it confronts competition of a strength and variety that it did not anticipate when it initially drew up its Minimum Basic Rates. That is, I assume that ADT, like all other rational firms, when you put out a printed price list, that this takes into account all of the competition that you have anticipated, and you are putting out rates that you think you are going to be able to get, otherwise there would be relatively little purpose in putting it out [fol. 1102] as a printed price list.

The Court: Were you here this morning during the earlier testimony?

The Witness: I was here during a portion of the morning, Your Honor, but not all of it.

The Court: You no longer think you are dealing with a rational firm, do you?

The Witness: Well, I would like to evade that question, if I may.

The Court: You can't evade it. It is too clear, isn't it,

that the company, whatever else it does, does not purport to have a rational price list related to different markets? It is the most unscientific enterprise of which I ever heard in this mid-20th century, and I defy you to name one of equal size which is more non-rational. Did you ever hear of one more non-rational?

The Witness: I had not heard all of the testimony, I am afraid, Your Honor, that led to your conclusion that this was irrational.

The Court: They admitted—was it Mr. Drew or Mr. Mahoney? I have forgotten.

Mr. Williams: Neither of those gentlemen are from the American District Telegraph Company, Your [fol. 1103] Honor.

The Court: No. Yes, that is right. I am sorry. That is quite true. It was Mr. Drew that I am thinking of.

Mr. Williams: Dr. Markham's testimony is not directed, of course, to the other two Alarm Companies at all.

The Court: Yes. But from looking at this situation, aren't you clear that whatever else goes on there is no rational, scientific or even psuedo-rational or psuedo-scientific attempt to fix prices according to different markets and different degrees of economic situations.

The Witness: Well, Your Honor, that may be due to the fact that competition does not permit the articulation of such a price policy.

The Court: Well, never mind what the reason is. You are not dealing with what by any stretch of the imagination might be called a highly articulated, rational system of prices, are you?

The Witness: I believe you are correct, yes, sir.

Well, as I had indicated, I do put some weight on the [fol. 1104] fact that the firm, however it may arrive at its list price, has to in somewhere between 35 or 40 per cent, as a minimum, have to sell at less than the list price because of competition that it confronts.

Now I would like to go into some of the competition that I think it confronts because it has a good deal to do with market definition. I am going to concede at the outset that market definition is, for purposes of anti-trust policy, is an extremely complex concept. It varies case by case. It varies Government complaint by Gov-

ernment complaint. It varies from defendant to defendant. But——

The Court: Not to mention from Judge to Judge.

The Witness: Not to mention from Judge to Judge.

It does, however, seem to me that one of the strong indications of competition is the extent to which a firm, after making price concessions in open competition with other competitors, whether they sell identical or reasonably similar type services, first of all, I would emphasize that in order to reduce—if you have to reduce price below [fol. 1105] your average to get it that this indicates competition; if you do this and still lose it, I would argue this again comes reasonably close to the notion that economists have of the cross-elasticity of demand. That is, that you have firms vieing for the patronage of certain customers. They do it on a price basis.

The customer takes a look around and on the basis presumably of cost, type of service, other considerations that he is interested in, selects one over the other. Now I——

The Court: There is no difficulty in my following that. What I want to know is have you now made such a precise examination to tie that theory into effect?

The Witness: Yes, I have. In the period that this tabulation covers, the American District Telegraph Company lost, after actively trying to get, lost a total of 3,462 customers.

The Court: Well, that is a very interesting local figure, but I am not a bit impressed by that. What about the situation if examined more minutely, as you would have to do if you were now a candidate for a Ph.D. instead of [fol. 1106] having the glory of one already around your neck?

The Witness: I am a little uncertain as to what you mean by "more minutely."

The Court: Well, not a local figure, which does not help me one bit.

The Witness: I am not certain but I believe——

The Court: The number of contracts they lost does not mean much unless I know where and in what market and under what situations of competition.

The Witness: I believe that it is available by market

area, but I just do not happen to have it here because I was much more interested in how it fared generally as it entered the various local markets.

The Court: But I could not tell from what you just recited whether they lost a ten dollars contract or a $10,000 contract, could I?

The Witness: No, sir, you couldn't.

The Court: And I could not tell whether they were losing it to alarm systems which were central station alarm systems or something else, could I, from what you just recited?

The Witness: No, sir, you could not.

[fol. 1107] The Court: All right. I will take a recess until 2:15 and allow you and counsel to worry about this a little because I want to have as good a presentation as you can make.

(Recess.)

[fol. 1108] AFTERNOON SESSION

The Court: You may continue with your exposition?

The Witness: Thank you, Your Honor.

Just before the recess, sir, you asked me when I gave a figure of 3,462 solicitations that ADT had made at less than minimum basic rates but had lost to other kinds of competition—you stated that you would like to see how this would break down by the various local markets, the cities in which the solicitations were made.

I have had a chance to retrieve some of my working papers, and I find out that that information is contained in Exhibit F-69 and F-70 that was offered by Mr. Gaston, I believe, the day before yesterday, in which it presents a breakdown of the job solicitations lost and to what type of service, competing service it lost it to.

These are further divided into cities in which ADT is in competition with another approved central station service operator and cities in which it does not encounter direct [fol. 1109] competition from an approved central station service operator.

One other statistic——

The Court: Excuse me. Does that also show the percentage of business lost?

The Witness: No, sir, it doesn't.

The Court: Wouldn't you have to know that in order to estimate market power?

The Witness: Well, you would have to be able to approximate it in some way. You are quite correct.

Now, all that I can say with absolute certainty is that on each of these, because it is ADT attempting to get this as a client for central station service, at least it lost the minimum that you can put in a central station service for, which is roughly about $300 per year. I can say this with certainty.

I can say it is very probable that it is something in excess of that since it would be a remarkable coincidence if all of them bordered on the minimum.

I can't, however, make any reasonable judgments about how much, say, the competitor received in revenue because ADT lost this account. He may have gotten it, particularly in cases where it went to direct connection or to [fol. 1110] local alarm, at something less, possibly considerably less, than $300.

The Court: Can you even tell from those figures whether a competitor got it or whether the customer went out of business?

The Witness: These are tabulated as having been obtained by a competing service, including—in the cities where ADT is in competition with one or more approved central station service operators—those that went to central station and those that went to other systems.

But I don't believe that there is any way of estimating the actual dollar volume of sales other than the data that I have just indicated.

The Court: Well, if you had, by hypothesis, one company which owned all of General Motors and owned all of Ford but there remained in competition the other motor companies, and you could show that the combined hypothetical giants, General Motors and Ford, lost so many dollars' worth of sales of automobiles which went to other companies, that would really not demonstrate that my hypothetical giant didn't have market power unless I knew what the cause was.

[fol. 1111] The Witness. That is correct. I am going to

relate this, however, to some possible market share possibility.

The Court. What do you mean by "possibility"?

The Witness. Because I do not believe that it is possible to come up with a unique market share definition for ADT in view of the complexities which attend competition in this particular service.

The Court. Well, go ahead with your lecture.

The Witness. All right. One of the things, however, one can get is this. Through data that are available and, I believe, already in evidence, one can find out what percentage of the transactions ADT lost after going below MBR, what per cent that was of the total transactions after it went below MBR. That is, you can get what percentage, in other words, it lost after it decided to go below its minimum basic rate.

Again, there are no dollar figures attached to that.

Well, I am just going to refer to these two exhibits and briefly summarize what they show. They do show, as one would expect, I think, that when ADT loses business in [fol. 1112] cities in which it is in competition with an approved central station service competitor, it is more likely to lose its business to that type of service than it is to some of the others, such as local, auxiliary, direct-connected, guard service, other types of service, instead of tabulated.

But I think you can't throw altogether out of the window the fact that when you have two such firms or more actively submitting business that on the average 20 per cent of these subscribers do select other service even when they have two to pick from. They select another form of service over those offered by the two or more competing central station service providers.

The Court. Of course, applying this reasoning to aluminum, there are two or more competing aluminum companies —or there were in the days before Judge Learned Hand wrote his opinion. I am talking about the time when that was an active case. You could show undoubtedly that a large number of customers, after considering the matter—indeed, after having used aluminum for a certain period of [fol. 1113] time—decided they wouldn't go to the other aluminum company, Reynolds or some other company, but instead would use nickel or some other metal.

Would that have shown that there was not market power on the part of the Aluminum Company of America? You were not counsel in the case or an economist in the case, were you?

The Witness. No, sir, I was not.

I expect I was working for the Government about this time. I am not sure.

I think it depends, your Honor. Let me just make it quite clear that the fact that someone comes and assesses your product or service and then turns and goes somewhere else to me is not indicative of effective competition. I am much too much on the record to the contrary on this particular point.

The Court. Yes.

The Witness. In this case, however, I can't help by weigh rather heavily the fact that this is not just someone coming to ADT, looking over its services and saying No and running elsewhere. This occurs in a market in which these firms are actively soliciting the firm.

[fol. 1114] Presumably, that firm makes some calculation of the relative merits of this versus this, with respect to price and the type of service, and that is a little different from your buyer of aluminum who says, "Well, I will just not buy aluminum. I will go and buy nickel instead."

All that I can say is what the facts show: That when you have two or more viable central station service competitors competing with each other, actively soliciting the business, even though two or more will lose out in one time out of five to a competing form of service.

When you get into cities where, of course, there is no accredited or approved central station service other than ADT, the competitive picture changes considerably.

The Court. Let me change to a cigar for a moment, and the problem is between cellophane and tinfoil wrappers, and I find out that under 20 per cent of the cases, customers after having for a while used tinfoil or using cellophane, decide to buy unwrapped cigars. Does that show that there [fol. 1115] is no violation of the antitrust laws?

The Witness. You mean, if all of them decide simultaneously?

The Court. Oh, if all of them decide, that is different. Does that change the market for wrapped cigars?

The Witness. I would certainly say—I am not a cigar smoker, and I hesitate——

The Court. No, but the Supreme Court is a cigar devourer and for some reason devoured the wrapper argument.

The Witness. Are you asking me if in my opinion, just as a horseback opinion, wrapped cigars compete with unwrapped cigars?

The Court. Yes. Don't they?

The Witness. I would certainly say at the margin they must compete intensely. Whether they compete throughout I am not prepared to say.

The Court. And the fact that they do compete doesn't mean that you can't have market power with respect to wrapper cigars and the market is the market for wrapped cigars?

[fol. 1116] The Witness. Well, I would argue that you would need to modify any statistics that you would build on the basis of wrapped cigars. If you really did make an inquiry and found that customers switched to unwrapped cigars, then to that extent that market share needs to be downwardly revised.

That is, if I have a firm that has 75 per cent of the wrapped cigar market that narrowly defined but I still find that customers walk to a cigar counter and with reasonable frequency take a look at wrapped and unwrapped cigars, ask their price, find the unwrapped cigar cheaper, and say, "I will take the unwrapped cigar",—to that extent I would surely argue that the wrapped cigar statistics overstates the dominant firms' positions.

The Court. That is very interesting, because it is quite clear, isn't it, from common experience that what you have described as possibly happening with respect to customers of cigars does happen.

There is a very large number of cigar smokers who look when they go into a tobacconist's at both the unwrapped and the wrapped cigars, and you do know, as a matter of fact, the Supreme Court and other tribunals have held that [fol. 1117] the wrapped cigar market is a market.

So that you are really saying that I should try to persuade the Supreme Court to revise its views?

The Witness. No, sir, I am not trying to get you to revise the Supreme Court's views, but let me point out one

real difference between a service market and a commodity market where taste and technical specifications may enter in.

The firm in this case unquestionably is buying one thing, and that is protection for the prevention of financial disaster brought on by the loss of assets.

He can, of course, avoid financial disaster basically in one of two ways: He can subscribe to services that offer reasonable assurance that the loss will never happen, or he can forget some of this and take out insurance and say, "All I wish to make sure of is that if it happens, two months after it happens, I am financial as well off as before it happened."

So I think that it would be a little misleading to compare cigars or aluminum with this. It is a non-revenue producing [fol. 1118] activity of the business firm.

The Court. If I have understood your argument, under those circumstances plain insurance is in the whole market.

The Witness. Well——

The Court. Isn't that right?

The Witness. Not all of insurance is in the market because, clearly, for some types of business enterprise the mere destruction of the place, no matter what his insurance, may be a disaster. That is, you cannot get——

The Court. If you assume Lloyd's insurance which will cover the potential profits as well as the loss of the assets, as I understand it, Lloyd's is always *in the market.* I don't mean in the sense in which lay people understand it, but in the sense that you and I understand it.

The Witness. Yes, I understand that. Still, if it is the type of business where the assets are so unique that if destroyed you could scarcely ever get back into this industry again on the long pull as a corporate enterprise, then I [fol. 1119] would say in those circumstances I think one would be stretching the market definition beyond tolerable limits of elasticity to include insurance.

But I do think in many business enterprises again I would emphasize marginal competition at the margin sufficient enough to at least make some modification of a hard, fast, extremely narrowly defined market in view of the fact that this is a real live option and that certain firms pick it up.

The Court. Well now, if I really follow the drift of your points, which I think certainly have a good deal of weight, if it were a close case on the percentage of the market, then your arguments are very pressing. If, on the other hand, you have a situation where there is an 80 per cent dominance in the market, not much is to be said for the weight that ought to be attached to your arguments. Isn't that right?

The Witness. It depends, unfortunately, upon how,—I suppose—persuasive the data are, and, therefore, how much you would knock down the 80 per cent.

The Court. Yes.

[fol. 1120] The Witness. I mean, I can sum up my own major points and my whole presentation very quickly.

The Government has proposed that the market be defined as approved central station service. It has ascribed or attributed to ADT some 73 per cent of that, indicating it a relevant market. In terms of number of subscribers I believe it runs less—around 65 per cent.

My whole argument is that that, I believe, is clearly demonstrably too high.

The Court. How much would you knock off?

The Witness. Well, that was my next question. The Arthur D. Little report that was presented yesterday, while it didn't make any strong argument for the market being defined this way, did argue that if you did define it as electric protection, it would be not greater than 36 per cent.

Even that per cent impresses me as being subject to some modification in terms of the area of effective competition in a relevant market.

The Court. You would agree that 36 per cent in the textile market would be a monopoly under Section 1 of the Sherman Act, wouldn't you?

[fol. 1121] The Witness. I would not believe that it would be, did you say?

The Court. You would think it would be, wouldn't you?

The Witness. Do I think it would be a monopoly?

The Court. The Supreme Court would regard any one company that has 36 per cent of the textile market as having monopoly power under Section 1 of the Sherman Act. There is no doubt about that, is there?

The Witness. If there were any mergers attached to it

getting to 36 per cent, I don't think there would be any question about this whatsoever.

The Court. You don't have to have 50 per cent. You and I know that.

The Witness. No, you do not. That's quite correct. I would agree to that.

The Court. So you could take a pretty big discount from 76 per cent and still be in very grave danger under Section 1 of the Sherman Act.

The Witness. Very big.

[fol. 1122] The Court. You and I understand that that is the view of the Supreme Court, whether it is sound or not.

The Witness. That is correct. I would just say that this market percentage should be revised downward. I wish I could say by what percentage and I could be quite quantitative about it. I just can't. I can only urge that the 70-some per cent is too large. I am certain it is, though, less than 35 per cent as a true indication of ADT's market share.

The Court. Let me just say: In case your clients and your associates who are counsel in this case think you are giving away the case, let me tell you that your candor is the strongest point in your testimony and that I find you very persuasive, because I think you are testifying the same way now as you would testify if you were called as a Government witness.

The Witness. Thank you, sir.

Mr. Williams. I have no further questions, your Honor.

Mr. Story. We have no questions, your Honor.

The Court. You are excused. You have been very helpful.

[fol. 1123] The Witness. Well, thank you.

The Court. It is the only time I have really been able to see something that is important to the case.

Mr. Fritz. The Alarm companies have no further evidence.

Mr. McInerney. Your Honor, we have a witness, and we will proceed, if your Honor wishes, but I think that if I may mark some exhibits and, with the Court's indulgence, if we could start tomorrow morning, that would be all right.

The Court. That is all right, if it is going to take that long. How many exhibits do you have?

Mr. McInerney. I don't think we will finish today.

The Court. How many exhibits do you have?

The McInerney. The exhibits are very few in number. The testimony of our witness, only one, but I think it will probably take us beyond the recess this afternoon, so that we would go over to tomorrow in any event.

The Court. If that is your view—does it look as though the Government is going to have any rebuttal?

[fols. 1124-1125] Mr. Story. Not at this point, your Honor.

The Court. I would rather do it that way.

Would you, in the presence of the Government, mark the exhibits, so the Government may then see the exhibits, and, if they have any comments, I will know about it promptly?

Mr. McInerney. Yes, your Honor.

The Court. I will take a recess until ten o'clock tomorrow morning.

[Adjourned to 10 a.m., Wednesday, June 24, 1964.]

[fol. 1126] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 2785

[Title omitted]

Transcript of trial—June 24, 1964

[fol. 1127] The Court. You may proceed.

Mr. Conkling. With your Honor's permission, and with the consent of Government counsel, there are a few additional papers that we would like to place in the record, they being the General Services Administration information relating to the market.

The Court. Admitted.

Mr. Story. For the record, your Honor, I object to the offer of this material as being irrelevant and immaterial.

The Court. Objection overruled.

Mr. Conkling. Secondly, your Honor, and for the Court's convenience, we have had redone the objections to the Government's Deposition Testimony, which you already have, but they have been rekeyed to the pages of the excerpts.

The Court. Well, that being merely for my convenience——

Mr. Conkling. That is for your convenience, your Honor.

The Court. It is an exhibit for identification only, not [fol. 1128] an admitted exhibit in the case.

Mr. Conkling. Thirdly, the Government, in its designation of digest of Government's exhibits, there is Government's Exhibit 306, which is a letter to Mr. Forman, dated July 9, 1959. Mr. Forman's deposition, you will recall, was withdrawn by the Government.

The Court. Right.

Mr. Conkling. We, therefore, move that this document be stricken.

Mr. Story. Your Honor, we have a stipulation as to the authenticity of these documents, which not only covers the defendants' documents but also the exhibits that were brought in under the depositions, and we object to this.

The Court. I, over your objection, grant the motion to strike.

Mr. Conkling. Thank you, sir. That is all.

The Court. Mr. McInerney.

Mr. McInerney. Your Honor, yesterday in the presence of Government counsel and the Clerk of the Court we submitted a memorandum, dated June 22, 1946, listing those [fol. 1129] of the Grinnell exhibits that had been marked for identification on June 13th, which we wish to offer in evidence. We would now like to offer those documents.

The Court. The Government objecting on the ground that they are irrelevant and immaterial and incompetent and the like, I, nonetheless, admit the document and preserve the Government's objection.

Mr. Story. Thank you, your Honor.

Mr. McInerney. I call Mr. Fleming to the stand.

JAMES DOUGLAS FLEMING, Sworn

Direct examination.

By Mr. McInerney:

Q. Would you state your full name, please, and your home address, please?

A. James Douglas Fleming, 330 Blackstone Blvd., Providence, Rhode Island.

Q. And your occupation?

A. President of the Grinnell Corporation.

Q. For how long have you been employed by the Grinnell Corporation?

A. Since I was discharged from the Navy in World War I, March, 1919.

[fol. 1130] Q. Would you tell us briefly the positions you have held since that time? What did you start as?

A. I started as a sprinkler fitter's helper with the Grinnell Company of the Pacific, a wholly-owned subsidiary. I then became a sprinkler engineer, a contracting engineer, superintendent of engineering construction, a plant manager, a credit manager, branch manager in San Francisco, Oakland, and I was made vice-president and manager of the Pacific Company. Then I was moved to Providence, Rhode Island, the home office, in 1940, as supply sales manager. In 1942 I became executive vice-president of the Grin-

nell Corporation, a director in 1943 and president in 1948 and have been the president ever since.

Q. You mentioned one subsidiary of Grinnell, the Grinnell Company of the Pacific. How many other subsidiaries are there?

A. Grinnell has 24 consolidated subsidiaries and three unconsolidated subsidiaries.

Q. Would you explain the difference between the two?

A. Well, the consolidated subsidiaries are those that are engaged in the manufacture or sale of Grinnell products, consolidated in Grinnell Company's balance sheet, which is [fol. 1131] sent to the stockholders before the Annual Meeting.

The Court. Off the record.

(Discussion off the record.)

Q. And the unconsolidated?

A. The three unconsolidated are those in the foreign line of business, service business. They are the Automatic Fire Alarm, Holmes Electric and ADT, and those are carried on our balance sheet as merely an investment of what we have paid for them.

Q. What is your interest in each of those three, Grinnell's interest?

A. 100 per cent in Holmes, 89 per cent in Automatic Fire Alarm and 76 per cent in ADT.

Q. Is this differentiation between the consolidated and the unconsolidated subsidiaries shown on a balance sheet that is submitted to the stockholders of the Grinnell Corporation as part of your Annual Reports?

A. Yes, it is.

Q. Since how long has that been done?

A. Ever since we acquired an interest in Automatic Fire Alarm.

Q. Approximately what year would that be?

[fol. 1132] A. 1949.

The Court. Off the record.

(Discussion off the record.)

Q. Considering the Grinnell Corporation, together with

all of its consolidated subsidiaries, would you describe their business, please, generally?

A. The business is the manufacturing of cast and malleable iron fittings, valves, cast brass fittings, pipe hangers, pipe fittings. The Sales Division is divided into three main categories. The Supply Sales Division, which has in the United States 35 branch warehouses and does 71 per cent of our business.

Q. May I interrupt for just a moment and show you Grinnell Exhibit GRJ-39 and ask you whether the alphabetical index on the first eleven pages of the exhibit give the products of the Supply Sales Division?

A. It does.

Q. Thank you. I apologize for the interruption, Mr. Fleming. You were saying that the Supply Sales Division accounts for approximately 71 per cent?

A. 71 per cent, yes. The fire protection business accounts for 18 per cent. The next largest is the industrial piping, which last year was 8 per cent. Then we have Humidifica-
[fol. 1133] tion, which is primarily sales to textile mills, and job work in cast and malleable iron fittings, and that amounts to I believe three per cent.

Q. In the Supply Sales Division who are your major competitors?

A. Crane and American Standard are both larger than we are. I think they have about 65 warehouses against our 35 in the United States. Then there is Nolen, Republic Supply, and several hundred and probably thousands of independent jobbers or distributors.

Q. You mentioned the fire protection division. What is the major item of that division?

A. The selling and installing of sprinkler systems, fire sprinkler systems.

Q. Would you describe briefly for us what a sprinkler system is? If it will help, I would like to refer you to this item and ask you what it is (indicating).

A. That is a sprinkler head, which we install in the ceiling.

The Court. That may be marked as an exhibit for identification only.

(Sprinkler head marked Defendant Grinnell Exhibit A.G.).

[fol. 1134] A. (Continuing) This is connected by pipes to a water supply. In the water supply is either an alarm valve or a dry valve, which gives a local alarm if the sprinkler operates. We also, of course, have a gate valve which can be shut off after the sprinkler has put out the fire to stop the water.

Q. In the event the gate valve is not closed for any reason what would the result be?

A. There would be considerable or there might be considerable water damage.

Q. So that if the alarm valve is not heard that might be the result?

A. That is correct.

Q. Is there some way of correcting that undesirable result?

A. By water flow alarm, particularly, connecting to a central station.

Q. Does the use of a sprinkler installation without any waterflow alarm, or without any sprinkler supervisory system, result in any insurance premium discount?

A. Yes, it reduces the insurance premium by 40 to 90 per cent on fire insurance.

[fol. 1135] Q. Without any application of sprinkler supervisory or waterflow alarm systems?

A. That is correct.

Q. Would you have any idea how many sprinkler systems in the United States would have sprinkler supervisory and waterflow alarm systems available to them?

A. It would be less than half.

Q. Do you have any way of knowing how much less than half?

A. No, I don't. All I know is a large part of the sprinkler systems are installed in manufacturing plants, which are built near a city today, because most manufacturing plants are built in a smaller community or out in the country because of automobiles, so that you can get there readily. The central stations are generally only located where there is a large community.

Q. Do you know what the range of a central station is, approximately?

A. I believe it is something like 15 to 20 miles. I am not a specialist on central station.

Q. We have heard some talk here about actuating devices. An actuating device is physically connected to this [fol. 1136] sprinkler head in some way when there is a sprinkler supervisory system installed, is it?

A. No, it is not.

Q. Can you give us some approximation of what percentage of ADT's business is sprinkler supervisory and waterflow alarm business?

A. Approximately 29 per cent of their total revenue.

Q. Does ADT do any other business with respect to any products that are manufactured by Grinnell, and if I may be a little more specific, there is some relation between the sprinkler supervisory and waterflow alarm system and the sprinkler head, and I am asking is there any relation between any other service offered by ADT and any other product of Grinnell?

A. No, there is not.

Q. I would like to show you Defendants' Exhibit GRJ-59 and GRJ-60, both of which I believe have the same heading Commissions on Central Station Supervisory Business and I ask you if you are familiar with that system of commissions?

A. Yes, I am.

Q. Would you just describe it very briefly?

A. Well, we were paying a commission to our sprinkler [fol. 1137] salesmen for recommending sprinkler supervisory to their customers. We paid them as a commission ten per cent of the first year's annual revenue. We found that only five or six offices were reporting regularly. The way we determined whether a commission should be paid or not—Mr. Clapp handles it—was that if an office reported a particular prospect, he would check with ADT, and if they closed it within one year, why, the commission would be paid.

It did not mean that the sprinkler salesman was responsible for the sale at all. It just meant he got the commission.

Q. Is the system you have just described reflected on GRJ-59, in the third paragraph, so we need not take up the

Court's time with a further description of it as to the liberality with which commissions were paid?

A. Yes, that is correct.

Q. In the fourth paragraph of the same document, GRJ-59, it states, "Over the past three years I have noted that there are only about five or six sprinkler offices that have consistently taken advantage of this offer." Now that would be five or six offices out of approximately how many sprink-[fol. 1138] ler offices?

A. Out of 44 offices.

Q. What was the overall effect of this commission plan?

A. Why, it really was a flop. The total commissions paid amounted to less than $5,000 a year. That is to approximately 136 salesmen. Mr. Clapp recommended that this be discontinued.

Q. What year was that?

A. 1963. He is our Secretary and Counsel. I don't know whether there was any legal reason, but certainly from a business standpoint I saw no reason to continue it.

Q. From a business standpoint, do you have any idea what would account for this system being a flop?

A. Well, I think it was principally because the average supervisory job, which probably runs $800 to $1,000, annual rental, while the average sprinkler job would run $10,000. A sprinkler salesman is not going to spend any time selling an $800 to a $1,000 job if he has got a $10,000 job to work on.

Another thing is that a sprinkler salesman goes out, and he tells the customer, he says, "I am selling you the last thing in fire protection." Well, after he has sold the job [fol. 1139] it is pretty hard to go back and say, "Well, now I have got something even better."

And also the supervisory salesman is inclined to talk to the customer about water damage. The sprinkler salesman does not want to talk about water damage but a sprinkler system.

Q. Can you tell us how and when Grinnell acquired the controlling interest in A. F. A.? I think you told us when.

A. In 1949.

Q. How did that come out? Who negotiated it?

A. Mr. Clapp negotiated it. Mr. Clapp knew Mr. Payson.

Mr. Payson and Mr. Webster owned 51 per cent of Automatic Fire Alarm and we purchased their interest.

Q. What percentage, 51 per cent, did you say?

A. 51 per cent.

Q. Do you recall about how much you paid for it?

A. $1,300,000, approximately.

Q. What were Grinnell's reasons for this purchase?

A. First, or primarily because we felt it was a good investment. We knew it was a depression-proof business. We were negotiating with ADT for an extension of the 1907 agreement. We knew that if we did reach an agreement, [fol. 1140] Grinnell's participation would be cut down. We wanted to replace that income with other supervisory income if we could. And also Automatic Fire Alarm was Grinnell's biggest stockholder.

Q. What percentage of Grinnell stock do they have?

A. At the present time it is about 9 per cent.

Q. I would like to show you the cover page of Defendants' Exhibit GRJ-75, which is a summary sheet, which is on top of the General Fire Extinguisher Company Reports for the years 1928 to 1937. First of all, what was the General Fire Extinguisher Company in those years?

A. The General Fire Extinguisher Company was the predecessor of Grinnell Corporation.

Q. Looking at that summary sheet, GRJ-75, can you tell us approximately the relevance of the supervisory earnings that Grinnell had during the years 1930 to 1935 as compared with its other earnings?

A. Well, Grinnell's business is dependent upon building construction. So it is either a feast or a famine. For the years 1930 to 1935 Grinnell lost three and a quarter million dollars. If it had not been for their income from the sprinkler supervisory their loss would have been double that. It [fol. 1141] was the sprinkler supervisory or the income from the sprinkler supervisory that kept Grinnell going in those depression years. That is one reason why I wanted to see us replace the income that I felt we were going to lose in 1954, if possible.

Q. There came a time, did there not, when you acquired the Holmes Company?

A. Yes. That was acquired in 1950.

Q. How did that come about?

A. Tom Drew told me that a member of his golf club was the vice president of the New York Telephone Company.

Q. Would you identify Tom Drew?

A. He is president of Automatic Fire Alarm Company we had bought a 51 per cent interest in. He said that Russell Hughes, vice president of the New York Telephone Company, and a member of his golf club, told him that the Holmes Electric Protective Company, he thought, could be bought. So I wrote to Keith McHugh, president of the New York Telephone Company, to find out if that was so. He wrote back and said, "Yes, they would be very happy to see us." We went down and negotiated with the New York Telephone Company to buy their 100 per cent stock interest [fol. 1142] in the Holmes Electric Protective Company.

Q. Did you negotiate that personally?

A. Yes, I did.

Q. What did you pay for that interest, approximately?

A. $4,256,000.

Q. What were the reasons for that acquisition?

A. Well, going back, Eddie Ward, president of ADT at that time—before we acquired the interest in the Automatic Fire Alarm Company, in our meeting with Eddie Ward and negotiating an extension of the 1907 agreement—

Q. May I interrupt to ask you when those negotiations started?

A. They started in 1946.

Q. Go ahead, please.

A. I told Mr. Ward that Grinnell was going to stay in the sprinkler supervisory and valve alarm business, that we had been in it for over 40 years, that it was a depression-proof business, and that Grinnell was going to stay in it after 1954 regardless of what happened.

Mr. Ward said, "Why, Mr. Fleming, Grinnell knows nothing about the central station business, nothing at all. [fol. 1143] You couldn't possibly compete."

So then we bought control of the Automatic Fire Alarm. At the next meeting we had with Mr. Ward, he was very upset because we had bought control of Automatic Fire Alarm. He said that if it had not been for his straightening out his affairs with A.F.A. or—yes—Automatic Fire Protection, that ADT would have bought Automatic Fire Alarm.

Well, I said, "Now you can't say that we don't know the central station business."

"Why," he said, "Automatic Fire Alarm? All they know is sprinkler supervisory and water-flow and fire alarm."

He said, "That's just a drop in the bucket—the central station business. The big business is burglar alarm, and you don't know anything about it, and that's far more technical than either supervisory or waterflow or the fire alarm."

So that was one of the reasons. We bought Holmes for the same reason we bought Automatic, except Holmes did not own any stock in Grinnell, but it was a depression-proof business. We bought it as an investment. But we also bought it so that we would know something about or have [fol. 1144] someone in the organization who knew something about the burglar alarm business so we could compete with ADT.

Q. Did you feel that the two companies complemented each other in any way other than in the services they rendered? And I refer you to the cities in which they operated.

A. Yes, very definitely. Automatic operated in New York, Boston and Philadelphia, while Holmes operated in New York, Philadelphia and Pittsburgh. They were not in competing lines of business but they were in a similar business in that they were both in the central station business.

Q. Referring to Defendants' Exhibit GRJ-2, the 1950 Annual Report of the Grinnell Corporation, it would appear from that exhibit that you reported to the stockholders at the meeting on April 11, 1951 in part as follows, "Since 1907 our Company has been interested in the business of furnishing central station fire alarm and sprinkler supervisory service, and it was income from this source which substantially helped the company in weathering the last depression. The Automatic Fire Alarm Company and [fol. 1145] Holmes Company, companies whose past earnings records demonstrate that they are engaged in about as depression-proof an industry as can be found." Was that a further reason for your acquisition of the Holmes Company as well as the A.F.A. Company?

A. Yes, it was.

Q. Now does the Holmes Company operate in any area that has anything to do with any of the products that Grinnell produces and sells?

A. None at all. It is entirely foreign to Grinnell's business.

Q. Referring to the next acquisition, that of ADT, can you tell us how and when that took place, and to refresh your recollection with respect to that I would like to show you something that has been marked Defendants' Exhibit GRJ-49, which appears to be a letter to you.

A. Yes. This was while I was in Europe.

Q. What is the date of that letter, please?

A. On May 4, 1953, Mr. Glickauf of the Apple-Cole Company, wrote me a letter that he was going to call me on the telephone. He called on the 6th and talked to my secretary and told her that the ADT Company, or rather Western Union's stock in the ADT Company was for sale.

[fol. 1146] Q. What percentage did they own?

A. Western Union owned 62 per cent of ADT. She called me at Manchester, England, and I told her to call back Mr. Glickauf and tell him that we were very definitely interested and that I would immediately come home from Europe and get in touch with him, which I did. I arranged for a meeting, and I would say it was probably the middle of May, 1953.

Q. Who was present at that meeting?

A. Mr. Clapp, Mr. Rison, Mr. Glickauf, and he brought with him, to my surprise, Mr. Stackler.

Q. Had you ever met either Mr. Stackler or Mr. Glickauf before?

A. No, I never had. Mr. Stackler, according to Mr. Glickauf, was in the central station business in Chicago. Mr. Glickauf said that Mr. Stackler was responsible for his being brought in as a broker, and that he had promised Mr. Stackler that ADT's interest in Chicago would be sold to him, and he wanted to know if we bought the stock, the ADT stock from Western Union, would we sell off ADT's operation in Chicago to Mr. Stackler.

Q. What did you say?

[fol. 1147] A. I told him "Definitely not, that we would only be buying a 62 per cent interest. There were minority stockholders to be concerned with. And that we as a 62

per cent stockholder could not for a minute agree to sell off any of ADT's holdings."

Mr. Glickauf told me that unless we would he would not put me in touch with Mr. Marshall, and I told Mr. Glickauf that that was perfectly all right with me, that I would call Mr. Marshall on the telephone myself.

Q. Who is Mr. Marshall?

A. Mr. Marshall was the president of Western Union. So Mr. Glickauf changed his mind and arranged the appointment with Mr. Marshall.

Q. Would you give us an approximate date of that meeting?

A. I believe that was the last of May or it might have been the first of June. I think it was the last of May of 1953.

Q. Would it refresh your recollection if I told you that the Board of Directors met on or about May 28, 1953?

A. Yes, it would.

Q. Mr. Stackler has given a deposition in this case, which is marked Government Exhibit 357, and I would like to read [fol. 1148] to you from page 45 of that deposition, at which Mr. Stackler said—incidentally, before I do that, how many times have you met Mr. Stackler?

A. Once.

Q. And that was at that meeting in mid-May that you just described?

A. That is correct.

Q. Mr. Stackler said: "I told this to Mr. Fleming at our meeting.

"I would appreciate it if he would let us buy the Chicago part, and he pursue his interest in the rest of ADT.

"Q. What did Mr. Fleming tell you?

"A. He said they could not countenance that at the time. They were going to buy——

"Mr. Fritz. I object to quoting statements by another person.

"The Witness. Mr. Fleming said this to me.

"By Mr. Story:

"Q. You may go ahead, sir. Go ahead.

"A. He said he couldn't countenance that at the

time. They wanted it all, they were going to buy it all. But at some future time, they would talk to me about [fol. 1149] our company operating only burglar alarm in Chicago, and they, ADT, operating only fire alarm, or the contrary."

Now my question is: Did you say that?

A. No, I did not.

Q. Did you say anything that implied that in any way?

A. No, I did not. I made no commitment whatsoever.

Q. As a result of your May 28th meeting with Mr. Marshall of Western Union was agreement reached on the purchase of the stock?

A. Yes, there was.

Q. At what price?

A. We shook hands on a price of 12-½ million, that we would both recommend to our Board of Directors.

Q. Was that agreement embodied in a more formal agreement, which is marked Exhibit GRJ-50?

A. Yes.

Q. This agreement, dated June 16, 1953, states in part that of the purchase price, five per cent, or $625,000, was to be paid down, and the rest was to be paid at the closing to be held July 8, 1953. Then there are two cover pages postponing the closing date from that date to October 1, 1953, or at such date prior to that time as Grinnell may [fol. 1150] specify by ten days' written notice to Western Union. Would you tell me how that change in the closing date came about?

A. I received a letter from Mr. Barnes of the Department of Justice asking that we hold up the closing. He didn't say it was illegal but that he did want certain information presented to the Department of Justice so they could study it.

Q. Is that the letter I am holding in my hand, marked GRJ-52, or is that a copy of such a letter?

A. Yes, that is a copy of such a letter.

Mr. Story. Your Honor, for the record, I object to this on the basis that it is completely irrelevant and immaterial to the issues in this case.

The Court. Overruled.

(Letter dated June 29, 1953 from Stanley N. Barnes, Assistant Attorney General, to Mr. J. D. Fleming, President, Grinnell Corporation, Defendants' Exhibit J-52, received in evidence.)

Q. On receipt of that letter did you and the other officers of Grinnell confer with respect to it?

A. Yes, we did.

[fol. 1151] Q. What decision was made?

A. We decided that unless we could get a clearance from the Department of Justice we definitely would not go through with the deal, even if we had to forfeit the $625,000 down payment which we had made.

Q. Is that what occasioned this change in the closing date that I referred to earlier?

A. Yes.

Q. Was Grinnell going to pay cash for this investment? Was it going to pay the 12-½ million dollars in cash or was there going to be a financing of it?

A. We were going to pay cash but Grinnell would have to borrow the money.

Q. Was that money to be borrowed from the Equitable Life Assurance Society of the United States?

A. That is correct. We made arrangements to.

Q. Was that pursuant to an agreement which has been marked in this case as Defendants' Exhibit GRJ-51?

A. Yes, it is.

Mr. McInerney. I would just like to note very briefly, your Honor, that part of that exhibit, at page 11, provides for an opinion of counsel, Messrs. Bleakley, Platt, Gilchrist & Walker, special counsel for the company, "an opinion [fol. 1152] in scope and substance satisfactory to the Lender and its said special counsel as to the absence of any restriction in any Federal or State antitrust law or regulation thereunder applicable to the acquisition by the Company from Western Union of said 405,426 shares, constituting approximately 62 per cent, of the outstanding capital stock of ADT and as to the validity of such acquisition under all such laws and regulations."

Q. Did you comply with the request of the Department of Justice, referred to in the exhibit I just showed to you?

A. Yes. Mr. Clapp and Mr. Fritz took the papers asked

for by Mr. Barnes down to Washington and presented them to the Department of Justice.

Mr. McInerney. I won't go into the details of this because we have them marked as an exhibit in the case, your Honor, Plaintiff's Answers To Interrogatories Or Excerpts From Them, which are Exhibits GRJ-76, which tell the story.

Q. The Department of Justice did, however, thereafter acknowledge receipt of this information, did they?

A. That is correct.

[fol. 1153] Q. They did so by a letter from Mr. Barnes?

A. Yes, sir.

Q. Were you advised that there was a letter from Mr. Barnes to you or to your attorneys?

A. Do you mean asking for additional information?

Q. No, sir. I believe there were only two letters from Mr. Barnes in this case.

A. I know our attorneys received a letter from the Department of Justice that they told me was a clearance letter, that gave us a clearance so we could go ahead with the deal.

Q. Can you fix the approximate date of that letter, what month it was?

A. I believe it was in July of 1953.

Q. Exhibit GRJ-55 is a letter from Mr. Barnes to Mr. Fritz, dated July 23, 1953. Did you thereafter go ahead with the closing?

A. Yes, we did.

Q. Did Mr. Glickauf receive a finder's fee as a result of his activities in this, and if so who paid it?

A. I believe that he did, because when I was negotiating with Mr. Marshall, President of ADT, and Mr. Glickauf was present, he said, "Well, Mr. Fleming, don't consider any commission for Mr. Glickauf in your negotiations be-

[fol. 1154] cause if there is to be a fee paid Western Union will pay it." Now whether there was anything paid or not, I do not know.

Q. Before Mr. Glickauf came on the scene, and before you had any knowledge of the possibility of acquiring ADT, did you negotiate on behalf of Grinnell an agreement that has been referred to as the Device Sale Agreement?

A. Yes.

Q. I show you Government Exhibit 87 and ask you whether you recall what the status of that negotiation was as of the date of that exhibit, which is January 5, 1952?

A. Well, up until June, 1950, we had been negotiating with ADT on the basis of an extension of the 1907 agreement. Western Union's general counsel sat in on the negotiations for at least a year. And suddenly he stated, in June of 1950, that we could not legally extend the agreement. He gave us his reason that it was an exclusive dealing arrangement because Grinnell installed all of the supervisory devices for ADT. Our attorneys contended——

Q. Excuse me. When you say "all the supervisory devices for ADT," that is in connection with their sprinkler [fol. 1155] supervisory and waterflow alarm service only, is that correct?

A. That is correct. And Grinnell manufactured and installed, both. Our attorneys, outside attorneys, contended that the 1907 agreement, as far as Grinnell was concerned, was more of a partnership or joint venture and, therefore, was not against the law.

We asked Mr. Clapp, and our attorneys, to negotiate with Mr. Gaillard, Western Union's attorney, to see if they couldn't get a meeting of the mind. Mr. Clapp wrote me on January 5, 1952 that after a year and a half of talking back and forth neither one could see the other's point of view.

Q. Is it fair to say there was an impasse at this point between the parties?

A. Yes.

Q. I show you Government's Exhibit 125, which appears to be a memorandum from Mr. AtLee, dated February 21, 1952. I would like to ask you, first, when you first saw that memorandum?

A. Well——

Q. Did you see it at or about the time of the event?

[fol. 1156] A. No. I didn't even know that there were any Minutes being kept. There weren't any notes being taken at the meeting. The first time I saw this was in the last few weeks.

Q. On that point also there have been various memoranda by Mr. McDonald introduced in evidence here. You

just said that there were no notes being taken at the meeting. Does that include Mr. McDonald, too?

A. That is correct. I did not know—I thought all of our negotiations were entirely off the record, and there were no notes taken at any of the meetings, although I just found out recently that Mr. McDonald did write a memorandum after each meeting.

Now this one I know is definitely in error because—in part anyway—because it states that, let's see—I guess this isn't the one—there is one of them that said that I stated that I talked about our competitors, and stated that the Rockwood Sprinkler Company only sold through licensees. Well, it is absolutely the reverse.

Q. Is that on page 2 of the memorandum you are holding in your hand? I am referring to the 5th paragraph down. [fol. 1157] A. Yes. He said that Reliable was in the plumbing business. Well, that is not true. What is a true statement is that the Reliable licensees are mostly plumbers. But I can see, with the man not taking any notes at the meeting, why, naturally he probably got mixed up.

Q. Did Mr. McDonald or Mr. AtLee show you any memoranda of these meetings in the years 1952 or any prior or subsequent years up until 1964? Did you see these memoranda?

A. No, I didn't even know they existed.

Q. Looking at Government Exhibit 125, however, can you tell from that memorandum whether there was a different approach to these negotiations taken at approximately the time of this memorandum, February 21, 1952?

A. Yes, there was.

Q. Would you explain that to us please?

A. Mr. Gaston suggested that we negotiate merely on those contracts, the sale of devices to ADT, the installed devices as of February 18, 1954, and leave all future contracts out of the negotiations.

Q. Do you know what the theory of that was? Had you [fol. 1158] been talking prior to this time about an extension or renewal of the 1907 agreement?

A. That is correct.

Q. When you were talking about a sale of the devices, was that looking toward such an extension or renewal?

A. No, it was not. Grinnell was to be paid for these de-

vices on the basis of what the annual revenues were in effect on February 18, 1954.

Q. Was it to have any share in any increase in those revenues?

A. No, it was not.

Q. Now looking at the second or third paragraph of Government's Exhibit 125, it states or quotes Mr. Gaston as stating, rather, "We," that is ADT, "were not sure that the attorneys would be willing to give even this proposal their full blessing." Now did the time ever come when ADT's attorneys did give that proposal their full blessing?

A. Yes, they did.

Q. And did you at some point conclude an agreement along the lines you have just been describing?

A. Yes. We concluded an agreement in December, December 29 of that year, 1952.

[fol. 1159] Q. Referring to page 4, the next to the last paragraph of that memorandum, it states, "Mr. Fleming said he thought that perhaps A.F.A. might be entitled to a higher percentage participation than finally agreed upon for Grinnell. He expressed the desire of the Grinnell Company to be eminently fair in any dealings which affected the Automatic Fire Alarm Company, because of the minority stock interest in that company which presently amounts to about 19 per cent."

Did you say that or something very much like that?

A. Yes, I did, and I meant it.

Q. Did you say that because you felt that maybe A.F.A. would get a better price because of your having said that?

A. No. It was mainly because I thought we should very definitely have gone to the minority stockholders.

Q. Did the time ever come when A.F.A. and ADT did resolve their terminal rights which resulted from the 1907 agreement? Have they now resolved whatever disputes existed between them as a result of that agreement?

[fol. 1160] A. Well, they entered into a new agreement.

Q. Did Grinnell enter into a similar Device Sale Agreement with A.F.A. similar to the one they had with ADT?

A. Yes, exactly the same.

Q. Does A.F.A. and ADT still operate in a sort of joint enterprise situation, AFA-ADT?

A. Yes.

Q. And have efforts been made to divorce them—to dissolve that partnership, if you will?

A. Yes. We did not feel that we could take a part in it because of the minority stockholders but we have pressed the ADT and the Automatic Fire Alarm to get together to resolve it. Their attorneys have met and have come to an impasse.

Mr. Smith, who is the regular attorney for Automatic Fire Alarm, feels that all contracts belong to Automatic Fire Alarm because they are in Automatic Fire Alarm's name, Automatic Fire Alarm sells them and renews them.

Mr. Fritz, representing ADT, has felt that ADT had an interest in those contracts because they operated them. And they came to an impasse.

Q. What possible solutions are there to this impasse?

[fol. 1161] A. Well, the only solutions that I can see from a business point of view is that either ADT buys the contracts, Automatic Fire Alarm operates them, or they split the contracts, or that Automatic Fire Alarm buys the ADT devices in the contracts from ADT, and that Automatic Fire Alarm operates all the contracts.

Q. Does ADT own some devices that are on the premises of AFA subscribers at the moment?

A. That is correct.

Q. Does this come to a fairly substantial amount of money?

A. Yes, it does.

Q. Would it be in the millions of dollars?

A. It would be in the millions.

Q. I would like to show you an exhibit that has been marked Defendants' Exhibit SS, a memorandum that has been identified by Mr. McDonald earlier as a memorandum he wrote on June 17, 1952, and I ask you if you recall a meeting similar to the one described in that memorandum?

A. Yes, I do.

Q. Has that meeting since come to be known as the "handshake meeting"?

[fol. 1162] A. That is correct.

Q. Now in the third paragraph of that memorandum, Defendants' Exhibit SS, it states, "Mr. Fleming said that he would like to read to us a memorandum prepared by Mr.

Roger Clapp setting forth what Grinnell believed to represent its legal position under the 1907 agreement." Do you recall whether there was such a memorandum and whether this memorandum, which I am showing you now, Defendants' Exhibit GRJ-69, is the memorandum referred to in Mr. McDonald's memorandum?

A. Yes, it is.

Q. And in that memorandum does Mr. Clapp refer to having received opinions of outside counsel with respect to Grinnell's position under the anti-trust laws?

A. Yes. He said he consulted with Mr. Claude R. Branch, former Assistant United States Attorney General, senior partner of the firm of Choate, Hall and Stewart, Boston. Mr. Branch's interpretation was that under the 1907 agreement on February 18, 1954 Grinnell would be entitled to 25 per cent of the annual revenue of all contracts in effect.

[fol. 1163] Q. As of when?

A. As long as they existed, as long as those devices were being used, that Grinnell had installed, those contracts or the renewals of them that were in effect, but not on any new contracts closed after February 18, 1954.

He felt that because there was nothing said in the agreement as to the parties' terminal rights, that if Grinnell had installed devices two months before February 18, 1954, it was not conceivable that they intended that Grinnell's income would be stopped on that particular contract at that time.

Q. Referring back to Mr. McDonald's memorandum, can you tell us the substance of the agreement that was reached at that handshake meeting of June 16, 1952?

A. Well, the substance was that Grinnell would purchase from ADT all of the devices that ADT had installed since 1907, less $5,000, I believe, that ADT had installed in replacement of Grinnell's devices, that might have been worn out or became inoperative, that Grinnell would participate—that Grinnell would sell the actuating devices that they [fol. 1164] owned in the systems, in the sprinkler supervisory and waterflow alarm systems that were operating on February 18, 1954 at the rate of 17-½ per cent on the frozen revenue as of that time.

Q. Was any agreement reached at that meeting as to the price Grinnell would pay for the replacement devices?

A. No, there was not.

Q. Would you tell us what the range of that price finally was? If you don't recall the exact figure——

A. I believe it was $880,000.

Q. That Grinnell paid to ADT for the replacement devices?

A. Yes.

Q. Did that handshake meeting eventually result in a formal contract?

A. Yes, it did.

Q. And was that the contract of December 29, 1952, that has been received in evidence as Government's Exhibit GX-89?

A. That is correct.

Q. As of the time that that contract was entered into, that is late 1952, were you aware of any changes that ADT [fol. 1165] planned to make in its organization and operations with respect to the manner in which actuating devices would be manufactured and installed?

A. Yes.

Q. What were those changes?

A. That ADT would have the right to purchase the devices from anyone they wished to or to make them themselves, and they would have the right to have anyone install them that they wished, any sprinkler company.

Q. Did ADT commence plans to manufacture its own devices at or about that time?

A. Yes. They actually made plans previous to that. They had bought equipment.

Q. And do they now make their own devices?

A. Yes, they do. They built a plant in Clifton, New Jersey to manufacture supervisory devices at this plant.

Q. And as a result of that did Grinnell cease making these actuating devices?

A. Yes.

Q. When was the changeover finally completed?

A. I believe it was 1961.

[fol. 1166] Q. What did ADT do with respect to implementing its plan to have any sprinkler installer install these actuating devices at about this time?

A. ADT decided that they would offer the installation to whatever company installed the sprinkler system.

Q. Those decisions were taken before Mr. Glickauf came along and before you had any interest in ADT, is that correct?

A. Yes, that is correct.

Q. Were they taken on advice of counsel, do you know?

A. Not that I know of.

Q. When you acquired control of ADT, did you make any changes in those decisions?

A. No. I told Mr. Gaston I felt that they should buy the devices from whomever they could get them the cheapest, the quality they wanted, or manufacture them themselves. In fact, I believe—I thought that ADT could beat Grinnell's cost because we were using men for making these devices when women could do the work, particularly the electrical part.

Q. Was it any part of this 1907 Device Sale Agreement that Grinnell would not compete with ADT?

[fol. 1167] A. No. Grinnell——

Q. I'm sorry. I believe I misspoke myself. When I said Device Sale Agreement I meant to refer to the termination of the 1907 agreement and the agreement of the 1954 that was entered into, the Device Sale Agreement—was it any part of the 1954 agreement that there would be any restraint on Grinnell's ability to compete?

A. No. Grinnell never at any time to the best of my knowledge ever had any agreement with ADT not to compete with them, either written or oral or verbal.

Q. Did Grinnell ever have any such agreement with anybody else who is a party to this case or anyone else?

A. No.

Q. Now as of this time, in December of 1952, did Grinnell make any plans with respect to the future operations of AFA and Holmes? Did it consider, for instance, merging the two of them?

A. Oh, yes. You mean after this agreement was signed with ADT, the Device Sale Agreement?

Q. Yes, or about that time.

A. Yes. It considered whether we merge Holmes and [fol. 1168] Automatic, whether we would be in a better position to compete with ADT. We ran into several problems. One is, of course, that Holmes is extremely well known in the City of New York and Philadelphia and Pittsburgh,

so we could not change the name. Automatic Fire Alarm had certain franchises, so that we had to keep the same corporation or lose those franchises. We even gave consideration—it seemed most plausible, in starting a new company, that it be made up of some Holmes and some Automatic Fire Alarm employees, that would go into the central station business.

Q. That was before this acquisition by Grinnell of the controlling interest in ADT? In referring back to that for just a moment, I believe I did refer earlier to an opinion of counsel that was to be given in connection with that acquisition to the Equitable, which was loaning the 12-½ million dollars. To refresh your recollection I will hand you GR-70.

A. Yes, it was.

Q. You have now had about ten years of experience under this Device Sale Agreement, have you not?

A. That is correct.

[fol. 1169] Q. As a result of that experience, have you been able to make some projection of the revenues that would come from this Device Sale Agreement in the next several years?

A. Yes, we have.

Q. Have you made a chart of what those revenues would consist of?

A. That is correct.

Q. Can you tell us what that chart shows? First of all, tell us how it was made.

A. Since 1954 our revenues have been falling off at the rate of approximately 3.18 per cent per year. So we drew a chart, and to be on the safe side we figured it at 3-½ per cent a year.

This shows that, according to the chart, by 2015 we would then have received $25,548,000 additional.

Q. Do you have a table there that shows that projection?

A. Yes. And if it goes to 2070 it would be $29,721,000.

Mr. McInerney. May I offer those in evidence, your Honor?

The Court. They are received.

(Chart showing Projected Revenues From Device Sales Agreement, Actual Receipts 1955-1963, Projected Receipts: [fol. 1170] 1964-2015 and two tables showing Projected

Revenues From Device Sales Agreement 1964-2070 marked Defendants' Exhibit AH and received in evidence.)

Q. Did you also attempt to make some estimate of what the replacement value of those devices that were owned by Grinnell and sold under the Device Sale Agreement would be today?

A. Yes, we did.

Q. How was that done?

A. Well, that was—Mr. McDonald of ADT estimated that the replacement value at 1951 was 16 million. We added the additions to 1954, which brought it up to $19,962,000. We took off the discontinuances since 1954, which amounted to $5,190,000.

Then we took from the Engineering News Record Construction Cost Index how much costs had gone up since 1954, which came to $7,611,000, making a present day replacement cost of $22,383,000.

Q. Were those figures audited by Grinnell's accounting firm of Peat, Marwick, Mitchell & Company?

A. Yes, they were. (Received in evidence as Defendants' Exhibit AI.)

Q. Following Grinnell's acquisition of these three Alarm [fol. 1171] Company subsidiaries did Grinnell make any changes at all in the management of the these companies or their management teams?

A. No, they did not.

Q. Did it make any basic changes with respect to methods of operations of these companies?

A. No.

Q. Was there any particular reason for that?

A. Well, Grinnell did not know anything about the central station business. In fact, before we bought Holmes from the New York Telephone Company, we insisted on Henry Ward, the President, entering into an employment contract with us so we could be sure we had somebody in Holmes who knew the business.

Q. Were there also some considerations with respect to your not having 100 per cent of each of these corporations?

A. That is correct.

Q. What were they?

A. Well, being that we had minority stockholders' inter-

est in ADT and Automatic Fire Alarm, we did not see how we could favor one company over another company.

[fol. 1172] Q. Do you and other members of the Grinnell organization sit on the boards of directors of these companies?

A. Yes, we do.

Q. Apart from being directors, does any member of the Grinnell organization, or any employee, or officer, or director or agent thereof, do any of these people have any employment with any of the three Alarm Companies?

A. No, they do not.

Q. We spoke a little earlier about consolidated and unconsolidated subsidiaries. Does Grinnell freely transfer personnel within the group of consolidated subsidiaries?

A. Yes.

The Court. Mr. McInerney, I am going to interrupt you for just a moment with respect to the question before the last.

Mr. McInerney. Yes, your Honor.

The Court. Mr. Fleming, I mean this as a compliment and not otherwise. I am deeply impressed with your familiarity with the company and your clarity of presentation and, if I may say so, your obvious strength of mind.

[fol. 1173] What I would like to know is whether you have any associates who, with all due modesty, you can tell me are comparable. For I have the very definite impression that if I ever saw a company which was in the control of one Napoleon, I am seeing it now.

The Witness. I'm sorry——?

The Court. I have tried to be fair with you by telling you what impression you are making on me. You are making an impression on me of great strength and force of character, great intellectual ability, unparalleled by any other witness in this case. You have just testified that you as a Director sit on various Boards.

The Witness. That is correct, sir.

The Court. And I am trying to find out whether you have an associate who is in any way comparable to you in force of character and mind? And I know it is a very difficult question to put to you because I assume you to be a modest man. But I would like you to tell me whether I am

mistaken in my view that you are without parallel in this company.

The Witness. Well, I wouldn't say that, your Honor. [fol. 1174] In fact it was only a month ago that we elected four Vice-Presidents to the Grinnell Corporation.

The Court. Well, without even knowing their names, are they people of independent distinction?

The Witness. They are all members of the Grinnell organization who have been with the company more than 30 years. Mr. Rison, our Treasurer, Mr. Davies, who is in charge of our manufacturing, and Mr. Pease, who is in charge of our industrial piping division, were made Executive Vice-Presidents. This is the first time we have had any vice-presidents since I was elected president in 1948.

The Court. I am not trying to mislead you and I hope you realize that. I am just trying to make you aware of a process that is going on in my mind and that might translate itself into a finding of fact in this case.

In determining what the relationship is between a parent corporation and an affiliated corporation, one of the useful methods is to look at the chart of the relationship between Directors in one company and Directors in another company. [fol. 1175] One way is to look at stock ownership. Those are all objective, easily verifiable standards, but they may not be the most revealing.

Sometimes there is in a series of connected organizations a man so outstanding that if he serves on each Board you know perfectly well that where MacGregor sits is the head of the table, and I rather have that impression with respect to another man of Scotch descent,——

The Witness. Your Honor——

The Court. —or Scottish descent.

The Witness. In the case of Holmes Electric, Henry Ward is President and Chief Executive Officer and presides at the Directors' meetings; in the case of Automatic Fire Alarm, Tom Drew does the same.

It just so happens that I am Chairman of the Board of ADT. The only reason I am Chairman of the Board is because Marshall before me was Chairman of the Board, who was President of Western Union, and so they wanted me to go in as Chairman of the Board.

As far as the responsibility is concerned, all it is is that

you run the Directors' meetings. I do not receive any salary, [fol. 1176] no compensation at all except a Director's fee of $75 when we meet.

But I do not take any part whatsoever in the management of any of those companies. I don't know the central station business, your Honor.

The Court. Mr. John D. Rockefeller, Jr. took no compensation in connection with the various Foundations, or organizations of a charitable or eleemosynary character, which he and his father had founded. He rarely allowed himself to be named as even a Director.

No one who ever had anything to do with any of the Rockefeller Foundations, Brotherhoods or the like had any doubt as to where power resided.

I am trying to tell you that I have very little doubt here, unless you point out to me other people, not officers of an internal nature, not employees, but independent men comparable to you in native force and strength.

The Witness. Well, we have one Director of ADT, Curtis Jordan, who is not an officer of the Grinnell Corporation. He is a Director of the Grinnell Corporation. He is a large stockholder in the Grinnell Corporation, his family is. The [fol. 1177] rest of the Directors are made up of officers of either ADT or the Grinnell Corporation.

The Court. I hope you realize I do not mean anything adversely critical. On the contrary. If I may say this without regarding myself as flattering you, the kind of quality that you have is rare and admirable.

The Witness. Well, I am 67 now, your Honor, and I will be 68 in December, and I hope I haven't been running things like Napoleon.

The Court. No. The word Napoleon has, of course, a pejorative or unfavorable aspect. I did not mean that. What I meant was that kind of ability which rarely emerges but always carries with it command.

The Witness. Thank you, sir.

Q. I would like to ask you one further question in connection with this. Since you and the other Grinnell men have been sitting on the Boards of Directors of these companies, do you recall any instance where the Board of Directors has vetoed or rescinded or over-ridden any management proposal or plan?

A. We had one instance in ADT. It was a question of [fol. 1178] whether ADT was to go ahead with a central station in Paris, France. Mr. O'Brien and Mr. McDonald voted against it. Mr. Gaston and the rest of the Directors voted for it. And we are going ahead with it as rapidly as possible. But that is the only instance that I know of.

Q. What are the foreign interests of ADT in general?

A. What did you say?

Q. What are the foreign interests of ADT? What do they consist of?

A. ADT has a central station—oh, to begin with—ADT owns 51 per cent of Dominion Electric in Canada and 51 per cent——

Mr. Fritz. If your Honor please, it seems to me—and I don't like to disagree with co-counsel—but we are out of the field that is covered by the complaint and I respectfully disagree with this procedure.

The Court. You want to yield to your associate's view?

Mr. McInerney. Yes, your Honor.

The Court. That saves me from ruling on the subject.

Mr. Story. I think, your Honor, now that we are into it, [fol. 1179] I think the gentleman here, Mr. Fleming, should answer the question.

The Court. You have no authority to put questions for the defendants. You will have a chance to put questions for the plaintiff.

Mr. Story. As I understand it, the question has been withdrawn, sir.

The Court. That is correct.

Q. Has Grinnell given any financial help to these subsidiaries?

A. No, it has been the reverse. We receive financial help from them.

Q. How many stockholders does Grinnell have?

A. A little over 5,000.

Q. Where are they centered? Are they in Rhode Island or where?

A. No, they are in the 50 states.

Q. All 50 states?

A. Yes.

Q. And apart from the AFA interest in Grinnell, approxi-

mately how large a holding does the largest stockholder have?

A. Well, there is no stockholder, individual stockholder that has two per cent. The Diversified Investors Syndicate, [fol. 1180] I believe it is, in Minneapolis, a million dollar firm, does own slightly over two per cent.

Q. Do you know anything with respect to whether that is a one-man outfit or whether it is more widely held?

A. It is more widely held.

Mr. McInerney. Your witness, Mr. Story.

Mr. Fritz. Could I ask just one question, your Honor?

The Court. Oh, yes, certainly. Go right ahead, Mr. Fritz.

Cross-examination.

By Mr. Fritz:

Q. Mr. Fleming, you have been associated, in a sense, as a Director of ADT with Lawrence J. O'Brien, now the President of that company, have you not?

A. That is correct.

Q. And that goes back quite a number of years, is that correct?

A. Yes. I think he has been President two years.

Q. And you just noted a moment ago an instance in which you said that Mr. O'Brien voted No against a proposition [fol. 1181] where the other Directors voted Yes; is that correct?

A. That is correct. And Mr. McDonald voted with Mr. O'Brien.

Q. I wanted to ask you from your observation of Mr. O'Brien over the years whether you feel that he is a man of native force and strength?

A. Yes, I do.

Mr. Story. Your Honor, I have to object.

The Court. He is trying to persuade me and I will allow him to try.

Mr. Fritz. I thought your Honor might be interested in what Mr. Fleming knows on the subject, and I think he knows a lot.

The Court. Yes. I think he certainly knows a lot.

Mr. Fritz. Thank you, sir.

The Court. Is there any further examination of Mr. Fleming?

Mr. Story, is there any examination?

Mr. Story. No, your Honor.

The Court. All right.

Mr. Story. But I would like to make a statement.

[fol. 1182] The Court. I will allow you to make a statement. But I will also allow Mr. Fleming to go about his business, if he wants to. If you don't want him, he is discharged as a witness.

The Witness. Thank you, sir.

The Court. Now you want to make a statement.

Mr. Story. I would like to call your Honor's attention to the fact that all of the information concerning the agreements about which Mr. Fleming has testified has been placed into evidence by the Government. There were contemporaneous documents written at the time of these events and, therefore, the Government does not desire to cross-examine Mr. Fleming.

The Court. With respect to yesterday's testimony, at page 559 there is an error in my statement. What I said was: "Is he testifying as somebody who graduated from a law school"? I did not say: "Is he testifying as somebody in a law school"?

At page 603 what I said was, in the middle of the page, "I sustain it on the ground the document is a constitutive operative legal obligation."

[fol. 1183] At page 666 what I said in the last sentence, the last line on page 666, was "unless I knew what the cause was" and not "what the century was."

Page 671, the first line should be "to buy unwrapped cigars" not "to unwrap cigars."

Page 674, the middle of the page, the word I used, which is written "load" should have been "the insurance company Lloyd's" and the paragraph should read: "If you assume Lloyd's insurance which will cover the potential profits as well as the loss of the assets, as I understand it, Lloyd's is always in the market."

The words "in the market" had better be underlined so it is plain I put emphasis on those words because the next sentence makes no sense unless the emphasis is evident.

Those are the only matters which I desire to straighten

out on yesterday's record, so far as I have read. Is there any other testimony?

Mr. McInerney. No, your Honor.

The Court. Do the defendants conclude their case?

Mr. Fritz. Yes, sir.

[fol. 1184] The Court. Has the plaintiff any rebuttal?

Mr. Story. No, your Honor.

The Court. On Friday, September 11, 1964, you will please serve upon opposing parties and file with the Clerk of this Court your briefs. No brief more than 40 pages will be received, but the appendices may be unlimited. That is, any particular point that you set forth in the 40 pages may be elaborated in a longer appendix, but I want the 40 page presentation from each side so that I have it as it were as a summary of your total position, but I am not placing any limit on the number of appendices nor the length of any appendix. So the effect is that the briefs are without limitation of space but there is a summary of 40 pages.

Reply briefs to be served on the other side and filed in Court by Friday, October the 2nd. Oral argument to be in this court on Friday, October the 9th.

I notify you in advance as firmly and clearly as possible that I intend if I should find, and I underline the words "if I should find" and underline it four times, in favor of the [fol. 1185] Government, I shall deal in my final stage with not merely questions of liability but questions of relief, so that the Findings, Conclusions and Decree will cover relief or remedy, if appropriate, as well as liability, if any.

Should I deal with the problem of relief I want you to be aware that I am thinking of possibilities more inclusive than those mentioned by the Government either in its complaint, or its briefs or in its presentation orally or otherwise.

In particular, if I should find a violation with respect to monopolization, I might deem it appropriate to consider a quasi-public utility regulation of the pricing policies of the central and adjacent parts of the monopoly, so that I might require pricing of all kinds by all of the defendants, or some of them, to be submitted to the Department of Justice and to the general public with the rational explanation of the basis upon which a price was calculated.

I also call to your attention that if I frame the Decree involving relief, I may consider appropriate an injunction

against the defendants continuing to employ officers or em-
[fol. 1186] ployees whom I find have either deliberately or negligently participated in violations of the Anti-Trust Act. That is, I may require the companies no longer to employ those who by their inattention failed to deter the companies who were in their charge from engaging in conduct violative of the laws of the Nation.

Is there anything else?

Mr. Fritz. I have just one question. I assume your Honor would feel that the brief that I should submit with respect to the three Alarm Companies should also be kept within the limits that your Honor indicated.

The Court. Yes. There really is no limit. All that I said is that I want a 40-page summary of whatever you say.

Mr. McInerney. Your Honor, now that the Government has concluded its case, we would like to make a motion to strike certain exhibits which we have embodied in a short memorandum.

The Court. The motion is denied but is there on the record.

Mr. McInerney. May I submit the memorandum?

[fol. 1187] The Court. Yes.

Mr. McInerney. Thank you.

The Court. Is there anything else, gentlemen?

Mr. Story. Your Honor, I would just like to ask for a little clarification as to the type of brief you would desire from us. Is it to be more or less a conclusion of law?

The Court. So far as I am concerned, I will write my own Findings, Conclusions and Opinion and Decree, without the aid of a law clerk or otherwise. They will pass through one mind, weak or strong as it may be. You may give me anything which you think will help me to that end.

If you think that specific Requests for Findings would be a good appendix to your 40-page opinion, you may do it. Whether I will pay much attention to it will depend upon me.

Mr. Story. You are getting through to me now, your Honor. Thank you.

The Court. All right. Is there anything else, gentlemen? (No response.) All right. Have a good summer. I haven't, at any rate, prevented you from having part of the summer to yourselves.

(Whereupon at 11.25 a.m. the trial was concluded.)

[fol. 1188] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil No. 2785

[Title omitted]

DEFENDANT GRINNELL'S MOTION TO STRIKE CERTAIN OF PLAINTIFF'S EXHIBITS—Filed June 24, 1964

At the close of testimony herein, Grinnell moves to strike the plaintiff's exhibits in accordance with the objections in defendants' Exhibit B for identification [Tr. p. 8], on the grounds that these exhibits have not been connected to and are not relevant against this defendant as more fully set forth below.

Exhibits 7 and 8 are a "Proposed" ADT sales manual and a general instruction distributed by ADT to its sales personnel. There has been no showing that any Grinnell representative ever knew of the existence of these documents.

[fol. 1189] Exhibits 9 through 53-55, 59 and 296-297 deal with acquisitions or proposed acquisitions by the alarm companies. Again, there has been no showing that anyone at Grinnell ever knew of these documents. Exhibits 9 through 28, 37 through 42 and 296-297 deal with acquisitions or proposed acquisitions by the alarm companies prior to the time Grinnell acquired any stock interest in them, so that there is not even that tenuous connection between Grinnell and these documents. There is simply nothing in the record which in any way connects Grinnell to these documents.

Exhibits 61 through 69, 72, 75 and 76 consist entirely of correspondence passing between Holmes and ADT dealing with their business relations at a time when Grinnell had no stock interest in either company. They also antedate 1951, and plaintiff has agreed that no important findings need be made as to this early period. Accordingly, these documents are immaterial and irrelevant, as evidence of any acts by or on behalf of Grinnell.

Exhibits 70, 71, 73, 74, 77, 93, 97, 98, 99, 102, 103, 104, 105, 106, 108, 110 and 227 are correspondence between Holmes, AFA and ADT and their customers setting out areas of [fol. 1190] operations of those companies at a time when they were all controlled subsidiaries of Grinnell Corporation. They are, therefore, subject to the twofold objection: one, that Grinnell's stock interest in the alarm companies is not a sufficient basis for admitting these documents against Grinnell and, other than that stock interest, these exhibits have not been connected; two, that they are irrelevant and immaterial since Grinnell was legally free to assign different areas of responsibility, including sales territories, among these controlled and wholly-owned subsidiaries.

Similarly, Exhibits 84, 90, 91, 92, 94, 95, 99-112 and 121 are irrelevant and immaterial in that they deal with lawful divisions of responsibilities among, and financial dealings between, controlled or wholly-owned subsidiaries of a single parent. Of these documents, Exhibits 102-106, 108 and 110 are documents passing between AFA and ADT or internal to ADT and, therefore, without connection to Grinnell.

Exhibits 96, 167-170, 173-174, 208-212, 222 and 231-235 are internal ADT memoranda exploring possible ADT pricing policies without any indication whatever either that these Exhibits or any ADT pricing policy ever came to Grinnell's attention. Exhibits 171 and 172 are similar internal memoranda of Holmes which are equally without connection to Grinnell.

[fol. 1191] Exhibits 113 and 114 are ADT letters, internal and to counsel respectively, which have not been connected to Grinnell in any way. In addition, they are on their face obscure as to their subject matter and of questionable relevance to any issue in this case. Moreover, both letters antedate Grinnell's acquisition of a stock interest in ADT so that again even the tenuous connection of stock ownership is absent.

Exhibits 129 through 132* are correspondence between

---

* There is no proper foundation for these documents. They were exhibits to the deposition of Henry G. Clark, taken in Providence, Rhode Island, which was withdrawn by the plaintiff [Tr. p. 14]. The same is also true of Exhibits 128 and 133.

ADT and RIEP in which ADT explores the possibility of acquiring RIEP. There has been no showing that anyone at Grinnell knew of those documents or of the possibility that ADT was considering the acquisition of RIEP. Exhibit 138 is an internal ADT letter concerning its working relations with RIEP, and Exhibit 290 is a letter from RIEP to ADT on their working relations; neither has been connected to Grinnell.

Finally, the great bulk of the plaintiff's exhibits are internal ADT memoranda discussing or reporting upon its competition, pricing problems, expansion possibilities, contract negotiations and all the minutiae of a nationwide sales organization having nothing to do with Grinnell's operations or with anything done for or on behalf of Grinnell. [fol. 1192] Exhibits 175 through 203 are ADT competition reports (ADT forms 401 and 701) which ADT field representatives send to their superiors to report sales efforts which have encountered competition, contracts which have been closed at rates other than the MBR, and so on and on. Exhibits 139-166, 204-207, 213-221, 223-226, 228 (ADT contract forms), 229-235, 237, 271, 273-276, 278-281, 283-287, 291-295, 300, 302, 303 and 306* are various ADT internal memoranda discussing or reporting upon contract negotiations, customer price resistance, new central stations, renewals, cancellations, etc.; none of these have the remotest connection to Grinnell. Exhibits 236, 272, 282, 298 (AFA contract forms), 299 and 307 (Holmes contract forms) are similar internal memoranda of Holmes or AFA which also have no connection to Grinnell.

In addition to those early documents noted above, Grin-

---

* Exhibit 306 is a letter from a potential subscriber to Mr. Forman of Call's Police Signal Corporation, Chelsea, Massachusetts, which was originally an exhibit in Mr. Forman's deposition, which was withdrawn from the record. Similarly, the letter from Henry Ward to the stockholders of Newark District Telegraph Company, Exhibit 54, was an exhibit to the deposition of Francois Guibert, also withdrawn. [Tr. p. 14] It was not offered even though Mr. Guibert subsequently appeared as a witness. [Tr. pp. 92-159] These exhibits are, therefore, without foundation in addition to being unconnected to Grinnell.

nell objects to Exhibits 78 and 79, the 1904-1905 ADT-McElroy-AFP agreements, as being irrelevant to Grinnell [fol. 1193] and far too remote in time to have any bearing upon any issue in this suit.

Exhibits 156, 159, 215 and 237 are documents which not only are internal to ADT and unconnected to Grinnell but antedate Grinnell's acquisition of ADT stock. Under no theory of the case could they be connected to Grinnell.

Exhibit 98 is a 1948 letter from ADT to AFA antedating both Grinnell's acquisition of either company and the 1951 cut-off on important findings agreed to by the plaintiff.

Finally, Exhibits 82 and 83 should be stricken as far too remote in time (1932-1939) to be relevant in the present proceeding even if there were evidence, which there is not, of the circumstances of the transactions indicated in those letters so that their antitrust significance could be evaluated. Two isolated documents dated over 25 years ago are not probative of anything in 1964.

June 23, 1964.

Respectfully submitted, Roger T. Clapp, Counsel for Defendant, Grinnell Corporation.

Of Counsel: Cahill, Gordon, Reindel & Ohl.

[fols. 1194-1197] CLERK'S NOTE:

Joint motion to correct transcript filed September 16, 1964 and allowed by Wyanski, J. on September 17, 1964 is omitted from the record. The corrections pursuant to said motion have been made.

[fol. 1198] [File endorsement omitted]

[fol. 1199] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Title omitted]

Transcript of post-trial argument—October 9, 1964

[fol. 1200] The Clerk. United States against Grinnell Company, et al.

The Court. The usual practice in this Court in an ordinary case is for the defendant to argue first at the conclusion of the case, but I am quite prepared to vary the usual practice if counsel would like me to in this case.

Mr. Story. The statement I have to make this morning will be very short, my initial statement. Whatever the desires of the gentlemen back there are—I don't care.

The Court. It makes no difference to me. I have read the briefs.

STATEMENT BY MR. FRITZ ON BEHALF OF DEFENDANTS ADT, HOLMES ELECTRIC PROTECTIVE COMPANY AND AFA

Mr. Fritz. Yes, of course, your Honor has, and I have no particular feelings about who goes first. I am going to try to be brief because I know your Honor has read the briefs. Therefore, I simply want to emphasize a few things, if I may.

Our basic contentions are two. The first is that this Court lacks jurisdiction of the subject matter of the action, which is a point I would just like briefly to advert to. The second point more generally is that the government has failed to prove the case alleged in the Complaint. That latter point, [fol. 1201] of course, breaks down into a number of subdivisions which I hope will be brief in discussing.

Now I know that your Honor understands the point we make in Point 1 of the Brief concerning interstate commerce, and briefly it is this, that by stipulation and by the testimony in the case, the nature of the subject matter, which the government has selected in this case, namely, Central Station Protective Service is a service that is rendered in isolated spots throughout the United States within areas only of 25 miles. They are, as we see it, essentially local and intrastate in character.

The cases seem to say, and we urge upon your Honor, that

Sections 1 and 2 of the Sherman Act have no application unless such local operations are shown to have some substantial adverse effect on interstate commerce. I am not going to discuss the cases because they are in the Brief and your Honor has undoubtedly looked at them. There is one in particular I would like to simply refer to at this time which is the fairly recent bowling alley case decided by the Court of Appeals in the Second Circuit. There there was a dismissal for lack of jurisdiction, the Court said properly, of the subject matter, and that was affirmed in the Court of Appeals, [fol. 1202] where it was said, "It may be that the defendants as owners of national bowling alley chains," as it may be said here of ADT at least, are interstate businesses. The test of jurisdiction is not that the acts complained of affect a business engaged in interstate commerce but that the conduct complained of affects the interstate commerce of such business.

Now in making this contention, I do not want it to be understood that I am saying that the business of the Central Station Companies of the non-defendant companies aggregating some forty-two here have absolutely no aspects or characteristics of an interstate character. They have some such slight aspects, and they are two.

One: Some of them buy equipment from points without the State, and by stipulation that amount for one year represents $757,000, I think the figure is. Also eight, I think, of the non-defendant companies furnish interstate Central Station service to points beyond State lines, I think to 270 subscribers, but the Briefs show that of that 270, 197 are subscribers of one company in Washington covering the Washington-Virginia area, and the total revenue from this type of interstate service for one year of all of these companies is [fol. 1203] roughly $110,000.

Now I say that that is a very incidental amount of interstate commerce. But I make a further point, that I see nothing in this record which indicates any adverse effect upon even that amount of interstate commerce through the acts of these defendants which are complained of by the government, assuming that the acts constitute what the government says they do. That is my point on that.

Now of course we get into the monopoly question, and that brings to the forefront right away the question of the

market. The government has selected, as your Honor well knows, as the market the business of supplying and installing protection devices on subscribers' premises through Central Stations accredited for such service by insurance inspecting and rating organizations.

Now we think that that is not only a narrow and an artificial market but we think that it does not have any rational basis and for this reason: the government takes in the revenue under this heading all of the unaccredited and unapproved services of accredited Central Station Companies. In the case of ADT, for example, we have some 61% of our Burgular Alarm Service which is not approved, [fol. 1204] that is it does not confer upon the user the right to have insurance credits.

The non-defendant companies have, I think, 71% of the same type of unapproved service which does not confer insurance credits upon its users, but that revenue is all included in this so-called market.

Now conversely the same type of unapproved service furnished by non-accredited Central Station Companies is excluded from the market, although there is no difference in the service.

And on the trial of this case, when I sought to adduce from one of the witnesses the fact that the United States government, which Mr. Story has once told your Honor is the largest user of electric protective service in the United States, what various types of service the government used, Mr. Story interjected with the objection that that was immaterial because the government is a self-insurer and therefore does not get credits and therefore it should not be considered.

Yet, the fact is that all of the revenue of these companies, the defendant companies and non-defendant companies, derived from service furnished the United States government is included in this market.

Now, finally, in an effort to show that there is a monopoly [fol. 1205] here, and this is directed only to ADT because there is no change of this kind against Holmes or AFA, the government says that in twenty-five years ADT has acquired twenty-two approved Central Stations and that by that means they climbed the ladder to a monopolistic position. But the record in this case shows that only two of that

twenty-two are approved Central Stations. Yet, the government seeks to include that in this market concept.

I might add at this point that two of those Stations, Central Stations that were approved, were acquired by ADT, one was the Reliance Alarm Company of Detroit back in 1946, involving about $200,000, and the other one was the Central Alarm Company of this city, which was acquired in 1955 with the express clearance of the Department of Justice.

So it seems to me that you have there a very obscure, ill-defined and not identified market, but a confused concept which does not lend itself to any real delineation.

Now in the circumstances of this case it seems to us that the controlling considerations are the principles that were laid down in the Cellophane case. Your Honor has made reference to that case in the course of our discussions here [fol. 1206] in the past, and I am not going to dwell on that except to say that was a Section 2 case and we figure presents situations that are quite parallel here.

We think that the narrow concept of market in Section 7 cases is not applicable. But even in those cases, in the most recent case, the Continental Can case, the most recent one that I am familiar with, points out that the contour of the market must conform with the realities of the market and that there must be a market that represents one of effective competition.

Now the government apparently in theory subscribes to that because in its Brief it refers to the area of effective competition but it does not stay with it in its practical handling of this matter for the reason that I have just indicated.

Our view of this market is that it is a much larger thing than the confused accredited Central Station with its mixed up type of revenues, including both approved and unapproved, and that it includes to a substantial degree a part of the business of furnishing electric protective service by all forms, proprietary, direct connected, auxiliary, local and to some extent even watchmen.

[fol. 1207] Now having in mind the Times Picayune case and common sense, we don't go to the infinite in dragging into the market, or trying to, things that might have some peripheral effect upon this question, but we do say that the

substantial elements of the protective market much be brought in and considered, and that upon that basis it will be found that these defendants do not occupy a monopolistic position.

Your Honor will find from the evidence in the case a very great deal of evidence of the interchangeability of the Central Station services with the various other types that I have mentioned a moment ago.

Your Honor will find numerous witnesses, I think twenty-seven in number, as shown in Note 11 of the Brief, are competitors who all agree that similar establishments similarly located and similar in area and inventory and what-not use these different types of services. Now the degree to which they are interchangeable, and in fact the amount which on the whole revenue-wise these various other types of services provide, we don't know. We have not attempted to sustain that burden in this case because we don't think it is ours. But we have attempted to bring to your Honor's attention sufficient information simply to disturb what the govern-[fol. 1208] ment says is the relevant market so your Honor can see whether or not they have sustained the burden they have assumed and which they must meet.

Our sales record, and I think the pattern of the whole industry, indicates very clearly this strong interplay in the furnishing of service among Central Station services of the approved, the unapproved, the direct connected and the auxiliary, that they cannot be removed from a consideration of the market.

Now, of course, there are differences, just as there were in the Cellophane case. There are differences in price and of course as to function they are identical—not that they are fungible but their purpose and their function are identical. In some respects some people think that direct connected and auxiliary service is better than Central Station because there you have a direct transmition of an alarm to either the Police or Fire Headquarters. A lot of people think that Local Burglar Alarms have some degree of superiority over Central Station because it is well-known that a hit and run plate glass break, for example, can't be handled by a Central Station—people can't get there fast enough—whereas [fol. 1209] a local alarm operating at the time tends to

scare off the intruder and really works for effective protection.

I simply point out that while there are differences, as there were in the Cellophane case, fundamentally this market cannot be broken down, as the government seeks to do it, in what I think is a hodge-podge idea of a market.

Now just briefly on the question of monopoly power. That goes, of course, to control over price and the power to exclude competitors. I am not going to spend very much time on that because the record in this case shows that whereas in 1945 there were eight non-defendant competing Central Stations in 1961 there were forty-two of those Stations, and from 1957 to 1961 their subscriber and revenue shares increased 4 to 5% whereas the same items for the defendant companies went down. So that it is obvious that they moved into an area without prohibition or restriction, so far as this record shows, of any kind.

And there is this further very significant fact, that in thirty instances in which new Central Station Companies were set up, they were set up and began their operations and are continuing their operations today in areas where ADT had a Central Station going at the time. Now if that is any [fol. 1210] evidence of power to exclude, I fail to see it.

Then there is the question of power over price. The government has harped right from the very beginning of this case and I take it right down to this minute on its contention that ADT fixes a price through its Minimum Basic Rates. We have tried to indicate here that while that is true we have endeavored from time to time to arrive at those rates by the considerations that ordinary businessmen give to the question of what should be charged for their products, namely, how much does it cost and what profit can I reasonably anticipate? And that is the guide or target price. But the experience of ADT is the same as it is for every business in the United States. When they go out in the market place, the target price is very often not achieved. Competition knocks it down.

And so in this case, during 1957 to 1963, from approximately 25% of ADT solicitations it received lower than MBR rates in cities where there was no competing Central Station, and similarly from 35 to 40% in cities having competing Central Stations.

Dr. Markham regarded this as an indication of the strengths and the variety of competition and as a repudia-[fol. 1211] tion of the government's market definition that I offered as an indication of the fact that we don't have power over price. And on top of that, may I say to your Honor that it is uncontested in this case that we have, and I mean by "we" ADT—this does not apply to Holmes or AFA—we have twenty deficit cities. And I cannot understand what kind of power it is that can allow twenty deficit cities to exist. If it has got that kind of power it ought to be doing better than that. The fact is that in those places we have price resistance and we have competition from other forms of protection service, I mean other than Central Station in those places.

The Court. Mr. Fritz, I think that is the first argument you have made that an economist would think unsound.

Mr. Fritz. I beg your pardon, sir?

The Court. I think that is the first argument you have made that an economist would think unsound, the one about deficit cities.

Mr. Fritz. Well, it may be. I think if that is the first one they would think was unsound, I think I have been doing pretty well.

(Laughter.)

[fol. 1212] I think I mentioned briefly the question of acquisitions, and I am not going to discuss that again because it is very plain that the argument the government makes about ADT's acquisitions is just untrue on the record in this case, and frankly I don't understand how it could have been made.

The question of retention of title—and I am not talking about that as a relief matter; I am talking about it as used by the government as some evidence of predatory conduct—I am not going to discuss it very much except to ask your Honor to listen to this paragraph from the government's Brief.

"Of primary significance, however, is the fact that retention of title has effectively excluded both actual and potential competitors."

Now to be polite about it, that is just a false statement

because there is not a scintilla of evidence in this record of the exclusion or the elimination of any competitor for this reason or for any other reason that the government alleges.

Now then we come to this ballooned-up charge, as I view it, of predatory conduct. That covers a great many pages in the govenrment's Brief and covers many, and perhaps too many, in my Brief. I think maybe we have gone into some [fol. 1213] detail at painful length. We felt we would rather err on that side and hope your Honor would not find it too great a burden. But there are many so-called instances of predatory conduct ascribed by the government to all three defendants to begin with, and here we are talking about, according to the Complaint, a conspiracy action.

Your Honor will not find in this record anywhere any activity of the Holmes Company that ties in with any of the alleged acts of the ADT Company, for example, not one.

With respect to AFA, there are only two that I am acquainted with. One is a conversation that Mr. Drew had with Mr. Goldstone in his office. The government puts a sinister aspect on that conversation. And if your Honor remembers what was in that deposition, or when your Honor reads it again you will see that there is no such conclusion possible.

What happened was that Mr. Goldstone, the President of another company, went to Mr. Drew for the purpose of buying a transmitter. He went to Mr. Drew's office. The government says that Mr. Drew visited Mr. Goldstone. That, I guess, was for the purpose of creating motivation. I don't know. But anyway it is contrary to the fact.

[fol. 1214] And it was in the course of that meeting, arising out of the desire of Mr. Goldstone to purchase a transmitter, that they had this conversation in which Mr. Drew pointed out that this was a tough business in the City of New York. And that's about all it amounts to.

And then there was one other thing, I think. Someone made the charge that there was price-cutting on the part of the Automatic Fire Alarm Company, and that was denied categorically by Mr. Drew on the stand.

Now I would like to just make reference to one or two other matters in this category of the so-called predatory conduct charge. I wouldn't think of going into great detail. But I want to pick out just a few because I feel that a great part of the government's case here is a case by way of asser-

tion, and when you come to examine the documents you don't find that the assertions are borne out.

For example, one of the points that they make is that the defendants, that is, all three of them, threatened and persuaded actual and potential competitors not to enter or to discontinue the business of Central Station protection service. Now that is a pure newspaper headline. There isn't an [fol. 1215] iota of evidence in this case to sustain that. And it is obvious that the person who wrote that headline realized it because they toned it down in the subsequent paragraph by saying, "The defendants adopted a policy of coercion, intimidation and persuasion in an attempt to persuade potential competitors."

Now that is weazling that nevertheless calls upon an adversary to get up and do something about it.

The Court. You may be confident, Mr. Fritz, that I am neither a jury nor emotionally 1/12th of a jury.

Mr. Fritz. I understand that completely, your Honor. I am only doing this now as simply what I hope might be of some little aid to your Honor in assessing this whole situation.

The government in support of that last modified position, that there is a policy of coercion and an attempt to persuade potential competitors from entering the field says this—talking about Oberlander—a competitor, "The ADT representative then told Oberlander that there would be price-cutting, and further that ADT could reduce prices to the extent necessary to prevent Oberlander from obtaining sub-[fol. 1216] scriber contracts." That is what the government said.

Mr. Oberlander said, "He didn't"—"He" meaning the ADT representative—"He didn't say that they would do it but said they could do it or implied that they could do it."

I think a candid statement of that ought to be something a little less than a translation into the existence of a policy.

Again, the government says that during 1950 several unapproved protection companies located in a rapidly expanding West Coast area contemplated entering the approved Central Station protection service business. The defendants continually abreast of such activities took immediate steps to block this potential competition.

Then to support this claim they cite an exhibit concerning

a salesman's memorandum to a District Sales Manager in which he says this—this is what the government puts in to support that proposition—"We gave him our personal opinion that there was no room in the East Bay for two Central Stations and that his only possible way of succeeding would be to sell present ADT subscribers. He assured [fol. 1217] me that that was not his intention but it is obvious that without substantial new construction Westfal would be compelled to tackle the present ADT subscribers."

Now if that is a block, it seems to me it is a very odd piece of work.

The Court. It is not even admissible against the company, is it, within the scope of its authority?

Mr. Fritz. No. There is no proof of it. But I am simply pointing out what the government uses here in order to substantiate these broadside charges.

The Court. Well, it is just a simple matter of evidence. It could not be held against the company.

Mr. Fritz. I agree. We filed our objections to all of these documents and your Honor has them before you.

Again, they say that we anticipated and infiltrated the Ceneral Station protective service market to preclude competitors from entering the market. What they do is they submit certain exhibits concerning surveys that were made by the company from time to time. It was not a fully-representative selection, so we offered the rest. But the net effect of these documents is to show, and as Mr. McDonald [fol. 1218] testified that the company examined various areas from time to time on a business basis to see whether or not they would stand another Central Station and would be profitable.

As Mr. McDonald said, in some instances it was found economically feasible to open a Central Station and it was opened, and in other cases it was found not feasible and it was not opened.

Now I am not going to discuss any more of the items of this so-called predatory conduct because it will take too long, and I think we buttress our statements by a great many detailed items of evidence in the appendices, and I am going to leave that particular item to the Brief for the balance of the matters involved.

There is in this case, of course, the perennial contention

by the government of dual pricing. I have never understood in this case what it meant. But from what I can see in the case, what the government is saying is that we have one price on paper, which is our MBR and we have another price when we go out in the market. Now what is strange about that, I don't know, but I would like to say this: If your Honor finds that there is anything wrong with our pricing policy which [fol. 1219] requires correction or in otherwise if your Honor finds that we have been wrong it may be that the suggestion which your Honor proffered in the last few hours of the trial of quasi-utility pricing is something that might very well be considered to control that situation, and I have taken the liberty of talking about that briefly in the reply Brief at page 26.

Now may I conclude in behalf of Holmes and AFA by saying that I am unable to see in this record the slightest evidence of conspiracy among these defendants. Now you go back to these old agreements made at the turn of the Century and you will find that while predecessors of Grinnell and predecessors of Automatic Fire Alarm and ADT entered into one set of agreements, these are the ones that terminated on February 18, 1954, Holmes was not a party to those agreements.

In 1906, however, Holmes had an agreement with ADT which, the record shows, was cancelled by mutual consent in 1947. AFA was not a party to that contract nor was the Grinnell Corporation. So far as the agreements are concerned in their entirety, there certainly was no concert of action.

[fol. 1220] There are no claims made, as I see it, in this case against Holmes or AFA from the standpoint of pricing or acquisitions or any other aspect except possibly by the generalized language that the government uses and attributing to all three defendants everything that any one of them did. By that method, as a matter of wording, these defendants are accused of a conspiracy.

As I pointed out earlier, if you take all of the things that the government charges ADT did, for example, you will not find a word of evidence in this case that Holmes participated in it, that AFA participated in it, that they knew anything about it. And, as a matter of fact, when you realize that Holmes operates in New York, Philadelphia, Pittsburgh and

Automatic Fire Alarm in New York, Philadelphia and Boston, it is quite obvious that what went on in the rest of the country, even assuming it wasn't right, couldn't be attributed to Holmes or AFA.

And so I say that this wholesale attribution of all the defendants with everything that was done is without any proper basis on this record. And I think that on the whole case the government has failed miserably to prove a proper [fol. 1221] market, what the relevant market is, that it has not borne its burden to that extent and therefore has not proved monopolization, and I don't think frankly that it has proved any conduct that could consistently be called a pattern with which the defendants could be charged as a contravention of the antitrust laws, and I respectfully submit that the Complaint should be dismissed.

The Court. Thank you, Mr. Fritz. Does anybody wish to speak on behalf of the defendants?

STATEMENT BY MR. MCINERNEY ON BEHALF OF GRINNELL CORPORATION

Mr. McInerney. May it please the Court, as your Honor is well aware the government has in this case introduced a mass of evidence and it insists that each item of that evidence is attributable to each of the defendants. In doing so it has ignored the admonition of the Supreme Court on several occasions, and on one occasion Mr. Justice Rugg in the case of Codio against the United States—that is a case we have not cited in our Brief, your Honor——

The Court. I know that case from other kinds of cases.

Mr. McInerney. Yes, your Honor. Your honor may recall that he said there, "Guilt with us remains individual and personal even as respects conspiracies. It is not a matter of [fol. 1222] mass application." And so we submit, your Honor, that Grinnell's guilt or innocence in this case must be judged on its individual merits.

The only justification that the government has for seeking to attribute this evidence with respect to each of the Alarm Companies to Grinnell is its allegation that Grinnell was somehow involved in a conspiracy with these companies. That argument is only valid to the extent that the government has some evidence connecting Grinnell to that conspiracy by independent proof of its own acts or statements.

Only then could these alleged declarations of co-conspirators conceivably be used against Grinnell to flush out the scope and extent and purpose of the conspiracy.

Now when we look to see what acts or statements of Grinnell are in this record, there is really very little. There is, first of all, the 1907 Fire Alarm agreements to which government counsel has referred, and in those agreements Grinnell of course had the obligation to devise, to make, to install and to maintain the so-called actuating devices which are used in Sprinkler Supervisory and Water Flow Alarm Services. In return for that they received 25% of the gross revenues of ADT and AFA from such services. [fol. 1223] As your Honor knows from our Briefs, we consider this in the nature of a joint venture, which the government has not proven unlawful, at its inception certainly, and there is no evidence that by the lapse of time it became unlawful.

Now quite the contrary. The lapse of time here had the effect of eliminating any conceivable restraint there was in those agreements because in 1954 there was the termination, to which Mr. Fritz has just referred, and several years prior to that ADT decided that it wanted to get into the business of manufacturing these actuating devices, and it told Grinnell that it was going to do so on the advice of antitrust counsel, with which Grinnell did not agree, but it had no choice but to accept it. This, of course, was at a time when Grinnell had no stock interest in ADT. And as a result of that ADT commenced plans to, and finally did, manufacture its own actuating devices. Grinnell curtailed its production, and finally eliminated its production and it is now out of that business entirely.

ADT has Sprinkler Companies, such as Grinnell, install these devices for it on an hourly work rate basis, which is non-discriminatory, and it is awarded on the basis of what [fol. 1224] Sprinkler Company installed the original sprinkler systems, so that, too, is non-discriminatory, and as a result of that you have an entirely different relationship between these parties.

The only vestige that remained of that 1907 agreement was the fact that Grinnell owned the actuating devices which were then installed in the premises of ADT and AFA subscribers, and the parties worked on how that terminal

right could be resolved and, as you know, they eventually bargained out in what Mr. McDonald called "the tooth and toenail negotiation," acrimonious at times and certainly not conspiratorial, the price of 17½%, later reduced to 17.2% of the revenues coming from those contracts which were served by the Grinnell-owned devices as of the time of the termination of the joint venture and at the rates frozen in effect as of those dates regardless of any increases thereafter.

The Court. Mr. McInerney, I wonder whether you really believe that inter se bargaining among conspirators proves there is no conspiracy. Surely you will recognize that—to take a case which I give only for its vividness and not for its analogy precisely—a group of bandits may conspire against the public and may among themselves have the [fol. 1225] greatest arguments and differences as to how the swag should be divided.

Mr. McInerney. That is true, sir, but——

The Court. That argument, it seems to me, is a useless argument. It may be perfectly true that there is no conspiracy but the fact that persons among themselves quarrel about the spoils does not prove there is no conspiracy.

Mr. McInerney. Your Honor, I am asking you in the context of all of the facts here and not the mere fact of bargaining to look at the question: for instance, putting the agreement in writing, the agreement in all of its terms. It was signed, sealed and delivered. It was done on the advice of antitrust counsel. It was submitted to the Department of Justice in 1953.

It was gone over by tax counsel, antitrust counsel for the government and for the private parties. And as a result of all that atmosphere and not the mere fact of the bargaining —your Honor is quite correct—I submit that there was nothing conspiratorial about this agreement.

The Court. All I am trying to say is that the relations inter se of people do not prove what their relations toward the outside world are.

[fol. 1226] Mr. McInerney. Yes, Your Honor. Now that I think is about all I want to say about the 1907 agreement at the moment, except to point out that even if we were to assume that it was an agreement in restraint of trade, it was an agreement that only affected the Sprinkler Super-

visory and Water Flow Alarm Services, which are only one facet of the Central Station business, which accounts for less than 30% of ADT's current revenues.

It had nothing to do with any other aspect of the business, and specifically it had nothing to do with the Burglar Alarm Central Station business to which Holmes is devoted exclusively.

So that even if we were to assume that there was some conspiracy there, and which we submit there was not, the only acts of declarations of alleged co-conspirators that could possibly be used against Grinnell would have to do with the Central Station Sprinkler Supervisory and Water Flow Alarm business, and that of itself would cut this record down considerably in so far as Grinnell is concerned.

There was, of course, a 1906 agreement that the government has alleged was a restrictive agreement that had to do with the Burglar Alarm business. That was the agree-[fol. 1227] ment between Holmes and ADT. Grinnell was never a party to it. There is no indication that Grinnell even knew of its existence prior to the commencement of this action.

Now in the Fire Alarm agreements and the Device Sale agreements, and I include in that the Rhode Island Electric Protective Company, and to which government counsel has already adverted, Grinnell's obligation was to sell these devices which it now no longer makes.

It did not agree to restrict its competition in any way. The fact is that it did not go into the Central Station business itself, but that fact of itself, we submit, is no evidence of any restraint or any conspiracy.

Apart from these agreements, the only other evidence of Grinnell's own acts or statements is its interest in the Alarm Companies, the fact of its ownership of these Alarm Companies.

Now that of itself, of course, is not sufficient to make whatever the Alarm Companies do binding on Grinnell unless there were some indication here that they were Grinnell's agents or alter ego or there was some reason for piercing the corporate veil. But there is nothing in this [fol. 1228] record that indicates that at all, and in fact government counsel partly argued that. There is no indication such as has been present in other cases where the

subsidiaries were held not to be the agents of the parent, of common officers or interchange of personnel or anything of that nature. In fact——

The Court. Excuse me. Are you mindful of my remarks on the last day of trial?

Mr. McInerney. I am not sure what your Honor is referring to.

The Court. When MacGregor sits at the head of the table——?

Mr. McInerney. Yes, your Honor, I am. Now Grinnell of course is engaged in a great variety of construction business sales and other aspects of the plumbing and construction supply business. 71% of what Grinnell does is that kind of sale. 18% is sprinkler sales, installations of sprinkler and other fire protection devices, and so on.

The business of Grinnell is entirely foreign to the business of these subsidiaries. They are in a service business, rendering protection services. Grinnell is in the business of supplying products.

[fol. 1229] Now that being so, the fact that we do have Directors elected by Grinnell, who are Grinnell officials, sitting on the Boards of Directors of these companies, does not mean that there is any domination by the Grinnell Company of these Alarm Companies.

In fact, they have an unusual degree of autonomy. I would say it appears that in only one instance was there ever a review of any management activity which the Board of Directors in any way took a position contrary to what management had taken with respect to it, and that, too, is in the record of this trial on our last day, your Honor.

There is just no reason and in fact, as I say, the government does not even seriously advance this contention, to think that there is a domination of these subsidiaries by the parent. There are no common officers. They do not interchange their personnel. The record is quite to the contrary.

Now instead of arguing that there is some domination or that there is any alter ego or any reason for piercing the corporate veil, the government advances a different contention, which has a bit of reverse English. They say that we are arguing that there could not possibly be a conspiracy [fol. 1230] between Grinnell and its subsidiaries. That is

not our argument at all. We do not argue that there is any immunity conferred by reason of the subsidiaries being present there. Quite the contrary. We are perfectly willing to concede that at least the threshold element of a conspiracy, that is, two separate entities capable of agreeing with each other, are established by the fact of the parent-subsidiary relationship.

What we say is that the mere existence of the parent-subsidiary relationship does not make unlawful what would otherwise be lawful if it were done by one person.

In other words, we say that instead of being a defense to this charge that the mere existence of the relationship does not constitute the offense. You must look to see what it was that the parties agreed upon between themselves: whether it restrained trade, and if it did whether that restraint was unreasonable in light of the fact of the parent-subsidiary relationship.

The Attorney General's Report in 1955, The Attorney General's Committee to Study the Antitrust Laws put it this way, "No social objective would be attained were subsidiaries enjoined from agreeing not to compete with each [fol. 1231] other or with their parent. To demand internal competition within and between the members of a single business unit is to invite chaos without promotion of the public welfare."

Now this is not in conflict with the Yellow Cab case or your Honor's remark about what the parties agree upon between themselves does not necessarily determine what their relationship with third-parties is. We are not saying that there could not be a conspiracy between parent and subsidiary which would affect third-parties and which might, therefore, be unlawful.

What we are saying is that there is no evidence of that here. The government's evidence to the effect that there was some coercion or restraint of third-parties has nothing whatever to do with Grinnell, and the only way that the government seeks to involve Grinnell in it is by the circular or bootstrap reasoning of using a semantic device of the Grinnell-controlled combination. They say that the Grinnell-controlled combination obviously involves Grinnell, that it was involved in a conspiracy and, therefore, Grinnell was involved in a conspiracy. And that very kind of reasoning

was used when they said at page 15 of the post-trial Brief, [fol. 1232] that in speaking of a meeting between an ADT executive and a competitor in Washington, and I quote, "The existence of an agreement between the Grinnell-controlled combination and the Federal Engineering Compay was thereby proven."

Now the only evidence had to do with an ADT executive. It had nothing to do with Grinnell. It is difficult to imagine a plainer case of an attempt to beg the question and to prove guilt by insinuation.

And apart from that kind of substitution of innuendo for proof or probitive facts and substituting the plural defendants when the singular is the accurate word "defendant" and that is done consistently in the government's Brief, the case against Grinnell has to do only with the Device Sale Agreements that I spoke of previously and the fact of stock ownership.

The government uses the first on the Section 1 charge basically and the second on the Section 2 charge. With respect to the Section 2 charge, as I mentioned, Grinnell is not a competitor in this business. It is not a significant supplier of any of these defendants. It is not a significant customer of them either.

So this is not a case of any horizontal or vertical merger as between Grinnell and any of these other Alarm Company [fol. 1233] defendants. The only connection between what Grinnell does and what they do is a physical connection having to do with this actuating device which is installed in the lead pipes to the sprinkler system, which I mentioned earlier. What the significance of that connection is I still do not know, after reading the government's post-trial Brief.

There is no indication that the ownership by Grinnell strengthens any of these companies competitively in the alarm business in the slightest way. In fact, it is the other way around. Grinnell receives financial aid from them. It is not the deep pocket or the fund for any of these companies.

As I mentioned, like any other sprinkler company, of course they do install these devices. The sprinkler business of Grinnell, while it accounts for about 18% of all its business, has nothing else to do with the business of these Alarm Company defendants, and most of those sprinklers that are

manufactured by Grinnell or anybody else are beyond the range of any of the Sprinkler Supervisory and Water Flow Alarm Services.

Grinnell purchased ADT stock, as the testimony shows, as a result of an emissary of Western Union coming to [fol. 1234] Grinnell quite by surprise and without any solicitation on the part of Grinnell offering to sell Western Union stock in ADT to Grinnell. Contemporaneous records show that Grinnell considered this to be a good investment because its basic business, the construction business, was that type of business, as Mr. Fleming described it "it was a feast or famine cycle," and the income from this type of business was a stable one because people protect their investment regardless of depressions.

Now the Complaint does not specifically attack any of the acquisitions that the Grinnell Company has made, and yet it may well be argued that while none of them is invalid in itself and, as I say, there being no horizontal or vertical connection, I don't think it can be argued that any of them is, that the effect of all of them is to have a monopoly of a Central Station market.

Now that of course depends upon what the relevant market is, and I won't go into that because your Honor has heard and read enough about that already, except to say that we concur completely with Mr. Fritz' definition of the market. It is a local market. It is a peculiar local market restricted by physical facts to within 25 miles of the Cen- [fol. 1235] tral Station involved.

Now this is a charge, of course, under Section 2 of the Sherman Act and not under Section 7 of the Clayton Act. So the government's burden here is to show that these acquisitions involve some actual restraint on competition and not some incipient restraint on potential competition, and that burden is a significant one here.

The Court. May I ask where you got that last statement?

Mr. McInerney. Your Honor, I think that nearly all of the cases distinguish between the burden involved in a Section 7 case and a Section 1 case.

The Court. No. I was talking about the distinction between actual and incipient.

Mr. McInerney. Well, the legislative history of Section 7——

The Court. I am not talking about Section 7. I am talking about Sections 1 and 2 and more particularly 2 of the Sherman Act.

Mr. McInerney. Well, your Honor, I mentioned the legislative history because when, as you know, in 1950 Congress saw fit to amend the Act, they were primarily concerned with avoiding possible restraints. They felt that the present [fol. 1236] Sections 1 and 2 at that time were not sufficient to do it and that they had to add asset acquisitions as well as stock acquisitions in order to plug a loophole, as they viewed it, in the Act of 1914.

In other words, if Sections 1 and 2 of the Sherman Act reached incipient restraints I doubt there would be much need for Section 7.

The Court. I understand the basis on which you have analyzed it.

Mr. McInerney. I think the Penholden case is about the most recent case that I know of that shows that distinction where the Court dismissed the Section 1 charge and yet found that there might be a violation of Section 7 by reason of a joint venture that those parties were entering.

Now in considering the legality of this acquisition of ADT, which is the only one the Complaint refers to in its prayer for relief, I would like to take note of two facts. First, the government's attack here has been to the effect that Grinnell's acquisition of these companies had no effect whatever on the relationships between them. What they say, and I refer particularly to page 35 of their post-trial Brief, [fol. 1237] is that there was a combination or conspiracy and it did not change from 1906 or 1907 up until the present time, and that there is no discernible effect by reason of Grinnell's acquisition of these companies.

Now had this been an action under Section 7 of course we would still have the argument that this was an acquisition, and all these were acquisitions made for the purpose of investment, which is specifically in the statute.

The Court. You may spend as much time as you want on Section 7 but I tell you that my Opinion is not going to spend one sentence on it.

Mr. McInerney. All right, your Honor. I will pass on to other things then. Thank you. One further facet of the acquisition that I think deserves some attention, although

I do not advance this as a defense to the action, is the government's looking into and not challenging Grinnell's acquisition of ADT in 1953. I think that is entitled to some consideration here both because it evidences the Department of Justice's view on whether this acquisition was illegal, and I think that is entitled to some weight at least, even though the view seems to have changed in the meantime, and also on the question of relief and of good faith.

[fol. 1238] The Court. Excuse me. When you say "the action of the Department of Justice," I am not unmindful of what goes on in the Department of Justice, having myself at one time been in that Department. Now what are you saying that I should regard as official action?

Mr. McInerney. I suppose I am adverting principally to inaction at this time, your Honor.

The Court. All right. You have made it clear enough.

Mr. McInerney. There was two years after this what has been called a railroad release letter or no action letter in this case because the investigation had been initiated by the Department itself rather than by a request coming from one of the acquired companies. They followed what was understood to be the custom of the time of not doing anything by way of sending a so-called clearance letter but simply saying that they had the information they wanted and not indicating any desire to do anything about it.

The Court. They wrote you a letter like the one I wrote you a week ago.

Mr. McInerney. Well, your Honor, I think I had a little difficulty in being quite sure whether that was a no-action letter or—I certainly didn't take it as a clearance letter.

[fol. 1239] (Laughter.)

Now I think it is helpful to compare the situation that existed back there in 1953 with the siuation that exists today because at that time Grinnell was in the business of manufacturing actuating devices, was the principal or the exclusive supplier of these devices to ADT. Since that time, of course, the situation has changed. It is not in that business. ADT is in that business.

At that time there were far fewer competitors in the business than there are today. The statistics have shown that we now have some forty-four Central Station com-

petitors—the Alarm Companies do, rather, forty-two, whereas back in those days it was less than half that number.

Now because of that, the only changes that have come about since 1953 have been in the direction of their being no restraint or less restraint, if any restraint ever did exist, by reason of this acquisition. We think that if the Department was right in then assessing it, that no action was required, that that conclusion would be all the more true today.

Now your Honor has indicated that if notwithstanding [fol. 1240] these various arguments that we advanced that your Honor finds that there is liability here, there will not be any separate hearing on relief, so I would like to advert to that subject for a few moments, even though it is an unhappy subject for us.

The Court. Well, it is much like arguing a case before a jury: when you argue the problem of damages at the same time you argue the problem of liability, always hoping you prevail on the ground that there is no liability.

Mr. McInerney. Yes, your Honor. Only two items in the demand for relief in this Complaint relate directly to Grinnell. The first is that Grinnell be divested of its interest in ADT, and the second is that all contracts existing between these parties be cancelled. I would like to advert to both of those.

Now the government has also had several other demands for divestiture in this case. In fact I might say that their demands for divestiture seem to be insatiable. First, they say that ADT ought to be divested wherever it is feasible to do so. Then they say that Grinnell ought to be divested of ADT, and more recently, although it is not in their Complaint, they advance the contention that Grinnell ought to be [fol. 1241] divested of everything else in the alarm business too.

Now the problems that are inherent in any divestiture really spring from, first of all, the problem of a local examination of ADT's business and what share of the market it has in the given cities. I won't go into that. It has been well taken care of already in Briefs of co-counsel.

I would like to add that if notwithstanding our arguments and those problems the Court finds that ADT should be divested, as the government requests city by city, or, if

alternatively the Court should find, as it has suggested it might, that there should be some public utility regulation here, then either of those steps would correspondingly reduce the need, if any exists, for any divestiture of Grinnell of its ADT stock because they would reduce the position of ADT as an alleged monopoly.

This case is concerned with competition and in the government's view restoring competition in the Central Station business. And if there is to be divestiture here by Grinnell of its ADT stock it seems to me that the only conceivable basis for that would be some argument that Grinnell should not be allowed to retain both its ADT and its AFA and Holmes [fol. 1242] stock at the same time.

Now if that is the argument, then even if there is liability here, we respectfully suggest that Grinnell ought to be allowed to keep either ADT or AFA and Holmes, ADT on the one hand, or AFA and Holmes, on the other hand, because AFA and Holmes are in different lines of business.

Now as Mr. Orich said in a recent speech, "A Court of Equity," and we all know this, "acts remedially and not punitively." The record here shows that there are over 5,000 Grinnell stockholders located in fifty States and no one has ever suggested that those shareholders have been guilty of any wrongdoing.

The Court. You are in a very dangerous territory. The record of antitrust proceedings in the last half-century shows that divestiture has over a long period of time benefited the stockholders of the companies. Unless you can persuade me that I have wrongly read history, you have invited me into an argument which is against your interest.

Mr. McInerney. Your Honor, I was not addressing myself to whether there should be divestiture now.

[fol. 1243] The Court. All right.

Mr. McInerney. I am addressing myself primarily to if your Honor finds that there should be divestiture notwithstanding our protestations, the method of that divestiture.

The Court. Oh, all right. I thought you were going to tell me that divestiture was a cruel blow to the stockholders. The record shows historically that it is of great benefit to them, but I intend to ignore it entirely.

Mr. McInerney. Your Honor, I think the method of di-

vestiture here might be a very cruel blow to the stockholders, and that is why I was getting into it.

The Court. If you had only been a stockholder of the Standard Oil Company in 1910 you would have been a most fortunate man.

Mr. McInerney. Your Honor, in that case the Court accomplished divestiture, in the Standard Oil case, by a spinoff, and that is the question I was getting to here.

The Court. Yes.

Mr. McInerney. If there were a distribution of Grinnell's stock interest in any of these Alarm Companies to its [fol. 1244] stockholders the immediate effect would be that the ownership of that company would pass to 5,000 shareholders none of whom, apart from AFA, and that is a separate problem which can readily be resolved, owns more than 2% of the stock. They are located in all fifty States. You would have a publicly held company held by 5,000 shareholders.

On the other hand, if Grinnell were required as the only way of divesting to sell to a third-party that would have very serious consequences to those stockholders. In the first place, the immediate consequence would be that it would take away from Grinnell the opportunity to have an alternative and it would take away from its bargaining position in selling to a third-party, and particularly if there were few prospective purchasers, it would make a difference there. The extent of that difference of course is problematical.

The second thing is even more serious. The sale to a third-party would result in a capital gain to the Grinnell Corporation and the tax on that, if you take the ADT stock at its current market value and multiply all the number of shares and you take 25% of the difference between the proceeds of that sale and the amount of Grinnell's invest- [fol. 1245] ment in ADT, the tax that the corporation would have to pay would be 8 million dollars before the shareholders got anything.

Now if the corporation then took the proceeds of the sale and passed it on to the stockholders in the form of money, of course, they would pay the ordinary income tax, which might amount to 70% depending upon the bracket that they were in.

The Court. You are not telling me that your ingenuity has been unable to think of other means of tax avoidance, sales through reorganization and the like?

Mr. McInerney. Your Honor, I don't believe—

The Court. I am not engaged for the purpose of thinking of tax savings through various kinds of disposition and various kinds of acquisition in connection with disposition but I am not persuaded by this simplistic argument.

Mr. McInerney. Your Honor, the only alternative that I know of that might be available to the corporation would be to attempt some kind of a partial liquidation and I am not sure that they would be able to do that here at all.

[fol. 1246] The Court. Nor am I persuaded that counsel as able as you would invite your client into an 8 million dollar tax situation.

Mr. McInerney. Well, we hope not to, your Honor. That is why I am making this argument to you today.

The Court. I am persuaded that your firm with its long history of successful tax advice can do better than that; even I could do better.

Mr. McInerney. Your Honor, I sincerely am at a loss to know what alternative there would be.

The Court. All right.

Mr. McInerney. In the case of the other two companies the tax burden would be somewhat less. But using the same principles and using the same method of computation, it would come to something like 2 million dollars for the two companies combined.

The Court. I also thought that you in your letter suggested some other problems which might have been handled in ways which did not involve me or parties before the Court and may have been so handled.

Mr. McInerney. Your Honor, we have taken no action with respect to the matters referred to in my letter because we were not sure how your Honor would want us to handle [fol. 1247] that.

The Court. Well, I have no control over persons who are neither parties nor officers of parties nor remotely connected with this litigation, and I cannot believe that if the advantages are as great as they were said to be in the letter there are not ways of proceeding which do not involve either this litigation or me.

Mr. McInerney. Well, your Honor, we need not have involved you, and I regret if we did unnecessarily, if that is your view. We could have gone ahead and done this transaction.

The Court. There are bankers in this world.

Mr. McInerney. Yes, your Honor. Perhaps I erred from an excess of caution in writing to you with respect to that transaction, which the Court may not consider to be properly within the realm of these proceedings.

The Court. I just thought it was something not raised in the issues in the case, as to which I heard no evidence and as to which it would have been highly improper for me, to use your own language, to issue a letter of clearance.

Mr. McInerney. Yes, your Honor. Well, I regret having [fol. 1248] submitted something to you if your Honor feels that it was unnecessarily submitted to you.

The Court. I don't think I was unnecessarily committed as a consequence.

Mr. McInerney. Now in asking that your Honor permit as one possible method of divestiture, if divestiture is needed, a spin-off, I want to make it very clear that we are asking for that as a possible optional way of doing it because the tax consequences of a spin-off which did not get the approval of the Internal Revenue Service would be even more serious than those that I have just outlined.

The Court. Yes. I understand that perfectly well. May I ask, however, whether there does appear in the record, because if there does I do not have it in mind, whether there are among these 5,000 stockholders many cases of a stockholder who owns 10% or more of the stock?

Mr. McInerney. It appears to the contrary, your Honor, in the record.

The Court. There is just one case?

Mr. McInerney. Your Honor, the only case in which anyone has more than 2% of the stock is that of AFA, and AFA owns ~~90%~~ 97% of the stock but that stock could be [fol. 1249] declared out as a dividend to get rid of that problem before any spin-off occurred, and I think that probably would be the appropriate way of doing it, if your Honor finds this has to be done.

Since your Honor is aware of the serious consequences

that might result from a distribution of stock held not to be a tax-free spin-off I won't go into it in detail.

The Court. I am well aware that even if I did provide for relief in any Decree I surely would not freeze it in such a way as to make it impossible to consider specific plans with regard to tax problems.

Mr. McInerney. Thank you, your Honor.

The Court. I don't want by any of my statements to imply that I have decided that the government is entitled to win this case.

Mr. McInerney. I appreciate that. I just want to make one very brief point further with respect to this tax situation, which is that if there were to be a spin-off we would need to have the approval of the Internal Revenue Service previously because otherwise we might be giving to our stockholders something that would be considered a dividend as of the date of distribution on which ordinary income tax would have to be paid depending on the bracket of the indi-
[fol. 1250] vidual involved and some of them might have to sell that stock in order to raise the money; the market would go down as a result of multiple force sales, and then the individual might not even be able to recover his taxes from it because his taxes are assessed as of the date of distribution rather than as of the date of sale.

The Court. I am going to add another point, Mr. McInerney. In the event that I should decide adversely to the defendants, and in the event I should require some kind of spin-off or its equivalent, I certainly would not require it to be done in any haste, and I certainly would stay any such provision until after there had been appellate review, if appellate review were sought, and by the time all those things had taken place there might be a change in the tax law, so I haven't any intention under any circumstances of writing such a detailed Decree, even if I decide against you, that you won't have ample opportunity at a later date to talk about tax questions.

Mr. McInerney. Thank you very much. I will drop the subject then.

The Court. Yes.

[fol. 1251] Mr. McInerney. There is only one other thing that I would like to advert to now, and that is the other part of the prayer for relief that refers to Grinnell spe-

cifically. That is the cancellation of any agreements, and no agreements are specified, just any and all agreements between or among these defendants. Now that, of course, would reach this Device Sale Agreement that I referred to earlier unless there is some specific enumeration in the Decree of what these agreements are. And if that were to happen, we would have the problem that there is due to Grinnell under these Device Sale Agreements the purchase price of 17.2 per cent of the revenues under the circumstances I have outlined previously.

Now what the exact amount of those future payments is cannot be said with certainty at this time because it depends on how long the contracts continue in existence. But in the evidence in this case we projected it and in fifty years it would come to some 25 million dollars. In other words, we are talking about a substantial amount of money here.

In the event that there to be ordered some cancellation of that agreement we would request that the parties be given an opportunity to negotiate for a lump sum settlement of [fol. 1252] that agreement which could be done on an installment basis or any other way, just a computation based on the actuarial experience over the past twenty years with the agreement. It can be figured out with a fair degree of precision although not to the exact dollar amount.

Now in conclusion I would just like to advert again to the fact that my remarks on relief are addressed really to what I hope will be a hypothetical situation, your Honor.

The Court. I already told you that I was not like a jury and you need not worry that I am going to think about any problem with respect to relief unless and until it becomes necessary to do so.

Mr. McInerney. Then, your Honor, I would like to conclude with the statement that all of what I have said, if I haven't said it specifically before, is to the effect that the government has the burden of proof here, it remains with the government, and we respectively submit that they have not fulfilled that burden by a fair preponderance of the evidence. Thank you.

The Court. Thank you. Any other argument on behalf of the defendants? All right, Mr. Story.

[fol. 1253] STATEMENT BY MR. STORY ON BEHALF OF GOVERNMENT

Mr. Story. Your Honor, my position as to the length of my statement has not changed materially since I spoke to your Honor earlier. I would like to call your Honor's attention to the fact that since the completion of this case the government has carefully reviewed all of the evidence that the defendants have introduced into this case. Now after this careful analysis of the evidence introduced by the defendants I see no reason at all, your Honor, to alter in any way any portion of the government's trial Brief which we filed with this Court back in January, 1964, several months prior to the trial of this case.

As your Honor has heard here this morning, we have been accused of distorting the facts, writing headlines without support of evidence. In our trial Brief, and I think your Honor referred to it as the magnum opus—maybe I should have written it up as a super magnum opus because there your Honor can see the headline and then read right from their own documents and determine right there who is misstating the facts in this case.

The Court. Breviary is better than a magnum opus.

Mr. Story. Pardon me, your Honor?

[fol. 1254] The Court. I said breviary is better than a magnum opus.

Mr. Story. Now, your Honor, since the trial of this case and pursuant to your Honor's Order the government has filed its post-trial Brief. Now this Brief also has been written after a careful consideration of all the evidence in this case. The government's total position in summary form is set out in this Brief, which is forty pages long.

We think that the evidence that the government has produced here is so overwhelming that the Court need not go beyond our post-trial Brief. But to be of assistance to the Court the government has gone further and submitted to the Court its Request For Findings Of Fact. There again, your Honor, the government has been accused of distorting the facts and misstating the facts. If your Honor will note in the government's Request For Findings we have cited not one exhibit or not one reference to the trial transcript but several such instances. We refer your Honor to specific

documents which we think will overwhelmingly support each item in our Request For Findings.

Now, your Honor, in mid-September I received copies of the defendants' post-trial Briefs. Frankly, I was greatly [fol. 1255] disturbed because of the many, many instances where the defendants in this case have deliberately misstated the facts. I am prepared here today to point out to your Honor many of those misstatements of fact. I would be able to read to you documents which the defendants wrote themselves—I did not write these documents—which would so conclusively show your Honor the many instances of misstatements of fact. I do not intend to do that unless your Honor requests me to do it because it would take too much time. It would amount in effect, your Honor, for us of resubmitting a trial Brief, which we have already done in this case.

The Court. It is unnecessary to please me for you to do that.

Mr. Story. Very well, your Honor. Now, your Honor, the government is very confident without going into any further detail—I am going to cut my statement even shorter than I originally intended to—that your Honor will read our Briefs and along with our Briefs you will read the specific documents that we have referred you to. We think that in that particular case that the evidence is so overwhelming that any misstatements of fact that may appear in the defendants' Briefs will have no effect whatsoever. [fol. 1256] Now, your Honor, the prohibitive value of the evidence which was introduced into this case by the government and the defendants has been treated by the government in a small reply Brief, and I think it is ten or twelve pages. Needless to say, your Honor, I don't think that the evidence that these defendants have introduced into this case has any or very little prohibitive value. Now that also includes several so-called expert witnesses that came into this Court to give advice or opinions in the field of economics or law. I have read that testimony. I looked at the basis upon which they have given their testimony, and I think it is so completely—the evidence upon which their testimony is based has absolutely no probative value at all.

The Court. You wouldn't even like me to take in your

favor the points which were conceded which would help the government? Is that what I am to understand?

Mr. Story. I don't think, your Honor, we need that help, but I would hope that your Honor would disregard a few documents if I have overlooked them. Now lastly, your Honor, the defendants have injected into this case an ele-
[fol. 1257] ment which I feel that the government is compelled to comment upon here this morning. Throughout the post-trial Briefs of the defendants they have gone to great lengths to demonstrate to this Court that they have originated and vigorously pursued policies of lawful conduct which would keep their activities within the purview of the antitrust laws.

The Court. Does that mean they have consulted counsel and acted accordingly? Is that what you mean?

Mr. Story. I am just taking the statements—

The Court. Well, I did not understand what that complicated language meant.

Mr. Story. These are statements by the defense counsel or someone in their Briefs pointing out that here again Grinnell has gone overboard to comply with the antitrust laws.

The Court. I understood the argument to be that at various stages they had consulted with people whom they regarded as competent and had acted in accordance with that advice. Maybe the advice was incompetent. But wasn't that the argument that was given to me?

[fol. 1258] Mr. Story. Absolutely not, your Honor. I think this record is replete with documents in here, and I can refer to some of them if your Honor would like me to do it, where their attorneys in this 1907 agreement—these joint venture operations that they have been talking about here so much—their attorneys told them that they're illegal. You better get rid of them. You might be indicted and be put in jail. Did they cancel them?

The Court. Now show me such a document—stop right there and show it to me—

Mr. Story. Very well, your Honor—

The Court. —where it says they will be indicted and put in jail. Just show it to me.

Mr. Story. Not in jail but indicted.

The Court. Well, why don't you say what is in the record instead of exaggerating?

Mr. Story. I did exaggerate.

The Court. I don't appreciate exaggerations.

Mr. Story. All right. I am sorry, your Honor.

The Court. I only appreciate understatements.

Mr. Story. I would like to read your Honor that document. Your Honor, the quote that I am interested in is found in Government Exhibit 85, which was the Minutes [fol. 1259] of Meetings held between the Grinnell Corporation and the American District Telegraph Company for the purpose of settling the terminal rights of the various parties to the 1907 agreement. This meeting was held on October 5, 1951, and I would like to read this to your Honor in part:

"Mr. Fleming. Where do we go from here since the attorneys indicated there is no legal possibility of going ahead under the present arrangement?

Mr. Gaillard responded that he felt that it was legally impossible to go ahead and that no alternative had appeared except for certain palliative arrangements of relative short duration and that he could see no possibility of working out arrangements that would be considered satisfactory to both parties over an extended period of time.

Mr. DeWitt"—who was one of the lawyers, I think, for the Grinnell Corporation, and Mr. Gaillard was the attorney for the American District Telegraph Company—and I quote, "Mr. DeWitt then inquired whether it would not be possible to ask the Department of Justice for an opinion in the matter. Mr. Gaillard remarked that in even thinking of such action Mr. DeWitt was bolder than he was."

[fol. 1260] I quote another paragraph:

"Mr. DeWitt then inquired whether Mr. Gaillard would consider asking the Department of Justice for an opinion. Mr. Gaillard responded that he would want to think about this most carefully, that the results might be catastrophic. You might, said Mr. Gaillard, get no decision but start proceedings that would have unknown results and might succeed in putting an end to the present arrangement."

That is one quote, your Honor, that I had in mind.

The Court. You have started proceedings which might

get to an unforeseen result, Mr. Story, if that is the kind of proof you have.

Mr. Story. I'm sorry?

The Court. Would you read exactly what I said?

(The following is read:

"The Court. You have started proceedings which might get to an unforeseen result, Mr. Story, if that is the kind of proof you have.")

Mr. Story. One further paragraph and then I will move on, your Honor.

"Mr. DeWitt inquired as to the possibility of criminal [fol. 1261] action in the event the Department of Justice was approached and Mr. Gaillard said that this was a distinct possibility," referring to the criminal proceedings instituted in the Gamewell case, which was held in this very Court.

The Court. I know that case.

Mr. Story. The American District Telegraph Company, your Honor, was a defendant in that particular case. Now, your Honor, as I stated, I feel compelled to state to the Court that the statements as to the conduct of these defendants, which they have gone overboard to attempt to do in their Brief to show you that they have attempted to establish lawful policies and have pursued them, is just not true. I think if your Honor would look all the way through the government's case here, the evidence, you would not need to go further than the record that we have here.

The Court. I promise you that I won't go further than the record.

Mr. Story. Well, then I would hope that your Honor would consider my statement. But, in any event, your Honor, I would like very briefly to state to your Honor Grinnell's involvement with antitrust enforcement actions since 1940.

[fol. 1262] The Court. Is that in the record?

Mr. Story. Sir?

The Court. Is that in the record?

Mr. Story. No, it is not, your Honor.

The Court. You just asked me not to go beyond this record, and I don't intend to.

Mr. Story. Very well, your Honor. Now in closing, your Honor, I don't know how much time I should take to try to straighten up some of the statements counsel have made in this Court today. One thing that Mr. Fritz brought up was that in the government's record we offered no proof whatsoever to show that some twenty-two companies which the American District Telegraph Company has acquired in the United States since, I think they said 1925 or 1907, that there was no showing whatsoever that these companies were Central Station protection service companies. I am certain that that should not concern your Honor. But they have made no showing that they were not Central Station protection companies.

In fact, those agreements were produced, your Honor, in response to a Rule 34 Motion To Produce Documents, and I will read that item to your Honor.

"Copies of all agreements between ADT and any com-[fol. 1263] pany engaged or which has engaged in Central Station protection business from January 1, 1907 to date."

I was in the offices and personally received those agreements which these defendants produced in compliance with this item in the Motion To Produce Documents. We received them on the basis that they were Central Station protection companies. I think that a careful examination of each one of the agreements will show on its face that they were Central Station protection companies.

But, in any event, as your Honor well knows we put them in and alleged that they were Central Station protection companies, and the defendants, if they wanted to do anything about it, the burden of proof was upon them to come in and show your Honor that they were not Central Station protection companies.

The Court. The burden of proof does not shift, Mr. Story.

Mr. Story. Now, your Honor, one other comment and then I am going to sit down—I think I have talked too long already—but I would like to make one other comment, and that is that Mr. Fritz went into detail about this so-called headline that the government had in its Brief about threat-[fol. 1264] ening and persuading actual and potential com-

petitors not to enter or to discontinue the business of Central Station protection service.

Mr. Fritz even went further and mentioned the incident of Mr. Oberlander of the Protection Alarm Company out in Peoria, Illinois.

Very briefly, your Honor, I would like to state what Mr. Oberlander's uncontroverted testimony concerning this incident shows. First of all, Mr. Oberlander said that a District Sales Manager and two other representatives of ADT came to his office shortly after he opened a Central Station. These representatives told Mr. Oberlander that Peoria, Illinois was not large enough to support two Central Station Companies.

Secondly, they told Mr. Oberlander that if he continued in the Central Station protection business he would lose a great deal of money.

Third, they told Mr. Oberlander that ADT with its nationwide operation could divert profits from many other Central Stations and lose money in Peoria for some time.

They also, and this is almost a direct quote from Mr. Oberlander, said that ADT could reduce prices to the extent [fol. 1265] necessary to prevent Mr. Oberlander from obtaining Central Station protection service contracts.

Now in addition to that, the ADT report indicates or supports the statement of Mr. Oberlander. I will read one sentence: "The three of us endeavored to point out the hazards and pitfalls encountered in this type of business."

I would like to let your Honor know this morning that they not only made that threat but that they have very effectively carried it out.

The government's evidence will show, and that is Stipulation Number 5, where we put in the business activities and the business volume of these companies, that two years after this threat Mr. Oberlander with all of his resources was able to obtain only five Central Station protection contracts in two years, and in the five year period between 1957 and 1963 he was only able to get forty-six contracts. That is a six year period, your Honor. That is less than eight contracts a year. They not only threatened him; they carried it out very effectively.

I have many other examples such as that, your Honor, but with that—the government would be very happy to

[fol. 1265a] answer or attempt to answer any questions your Honor might desire to ask—but with that I have nothing further to say.

The Court. Has anybody else anything he wishes to say? [No response] The Court will reserve judgment.

[fol. 1266] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 1267] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES COURT
Boston, 02109

Chambers of
Charles E. Wyzanski, Jr.
District Judge

November 27, 1964 8:50 A.M.

[Written in Longhand by Judge Charles E. Wyzanski, Jr.]

Hon. Neale D. Murphy,
Clerk,
United States District Court
Providence, R.I.

Re: U.S. v. Grinnell et al, C.A. 2785

Dear Sir:

In the opinion filed herein this day, there are errors as follows:

p. 2, 4 lines from the end of the Syllabus, strike "nearly 3 decades"; substitute "over 15 years"

p. 6, 4 lines from the end of the page, strike "denominated"; substitute "characterized"

p. 7, line 2, strike "is the complainant"; substitute "the complainant is"

p. 7, next to last line of the first paragraph, put a closing bracket after 1962.

p. 11, end of finding 15, put a comma after "defendants"

p. 11, finding 16, line 2, strike the whole line; substitute

"service to thousands of subscribers of whom more than 900 were each located in a"

p. 11, finding 18, strike the last three words on the page "100% of the"

p. 12, line 1, strike the first four words "capital stock of Holmes"

p. 12, line 3, add "Investment purposes were also a motive."

p. 12, finding 20, line 9, between "was" and "motivated", insert "in part"

p. 13, line 5, before the sentence "Since 1919", insert paragraph number "21a", and treat the sentence as a separate paragraph.

[fol. 1268] p. 13, par. 22, line 2, strike "decades earlier"; substitute "in 1919"

p. 18, 4 lines from the end of the page, strike "slight"; substitute "slightly"

p. 19, line 1, strike "complaint"; substitute "complain"

p. 19, finding 47, line 4, strike the semicolon after "loss"; substitute a full stop.

p. 19, finding 47, line 5, underline *deficit*.

p. 21, second full paragraph, insert paragraph number "51a".

p. 21, finding 52, line 4, insert a comma after "devices"

p. 25, conclusion 5, line 3, after "monopolize", insert "and do monopolize"

p. 25, conclusion 5, line 4, strike "both"; substitute "all"

p. 27, line 8, strike "retain"; substitute "retail".

p. 27, par. 8, strike "doubtful even"; substitute "even doubtful"

p. 28, par. 10, line 7, strike "exonomy"; substitute "economy"

p. 28, 3 lines from the end of the page, insert a comma after "but"

p. 30, par. 4, line 5, strike "grounds both"; substitute "ground"

p. 31, par. 6, line 9, strike "their"; substitute "legal"

p. 32, 5 lines from the end of the paragraph, strike "Vantage"; substitute "Vintage"

p. 32, 3 lines from the end of the paragraph, strike "appreciate"; substitute "applaud"

Please send photocopies of this letter to (1) all counsel of record, (2) West Publishing Co., C.C.H., Prentice-Hall, & U.S. Law Week; and (3) me.

Sincerely, s/ Charles E. Wyzanski, Jr.

Received November 27, 1964, Neale D. Murphy, Clerk, U. S. Dist. Crt., District of R. I.

9:05 a.m. Rec'd. by phone from Judge Wyzanski, Jr.

[fol. 1269] IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES COURT
Boston, 02109

Chambers of
Charles E. Wyzanski, Jr.
District Judge

Nov. 27, 1964.

[Written in Longhand by Judge Charles E. Wyzanski, Jr.]

Dear Mr. Murphy:

The word "supposititious" is misspelled on p. 6, 4 lines from the bottom.

Yours, s/ Charles E. Wyzanski, Jr.

Received November 27, 1964, Neale D. Murphy, Clerk, U. S. Dist. Crt., District of R. I.

9:05 a.m. Rec'd. by phone from Judge Wyzanski, Jr.

[fol. 1270] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 2785

UNITED STATES OF AMERICA,

v.

GRINNELL CORPORATION, AMERICAN DISTRICT TELEGRAPH COMPANY, HOLMES ELECTRIC PROTECTIVE COMPANY, and AUTOMATIC FIRE ALARM COMPANY OF DELAWARE.

Noel E. Story and Hugh P. Morrison, Jr., (attorneys, Department of Justice), for plaintiff.

Frank A. Fritz, Robert L. Conkling, Frank A. Fritz, Jr., Averill M. Williams, Robert O. Donnelly (of Bleakley, Platt, Schmidt, Hart & Fritz) and Matthew W. Goring (of Hinckley, Allen, Salisbury & Parsons), attorneys for defendants American District Telegraph Company, Holmes Electric Protective Company, and Automatic Fire Alarm Company of Delaware.

Denis G. McInerney (of Cahill, Gordon, Reindell & Ohl) and Roger T. Clapp, attorneys for defendant Grinnell Corporation.

Syllabus

This action brought against Grinnell and 3 affiliated companies, in each of which Grinnell has preponderant stock ownership, charges them with violation of §§ 1 and 2 of the Sherman Act. Affiliates are all engaged in the Central Station Protective Service business, which supplies services from central points to customers at whose establishments are automatic alarm systems signalling fires and burglaries. That part of the CSPS business which is accredited by insurance companies constitutes an identifiable market, distinct from non-automatic protective services, from automatic systems unconnected with central stations, and from systems not certified by insurance companies; and this market has a national interstate-commerce character. The affiliates have an over 87% share of that market; and the affiliates' policies are controlled by Grinnell. De-

fendants have not borne the burden of proving that they acquired this dominance through skill, efficiency, and foresight. The preponderance of evidence compels the finding that the present dominance of the affiliates in the industry was caused by their restraints of trade, in violation of § 1 of the Act. Those restraints included the execution of now-lapsed agreements which in their origin set patterns for allocations of territory and of types of business. Those patterns, though no longer legally enforced, have become, to a large extent, habitual in the industry. Moreover, the affiliates gained [fol. 1271] their dominance, to a significant degree, by acquisitions of the business or equipment of competitors. Grinnell, itself, in purchasing the controlling shares of these affiliates and in effectively, through its president, uniting their policies joined the alarm company affiliates in what, as a matter of law, constituted a conspiracy to monopolize the market, as above defined, in the accredited CSPS industry in violation of § 2 of the Act. Moreover, success having crowned the attempt, all defendants monopolized the same market in violation of the same § 2. As a remedy against these violations the Government is entitled to decree *first,* enjoining defendants from further acquisitions or restraints of trade, including a provision requiring each affiliate to notify the Government whenever it quotes to any prospective customer prices or terms lower than that affiliate's own schedule; *second,* divesting Grinnell of all stock ownership in the 3 affiliated companies; and *third,* enjoining each defendant from hereafter employing the president of Grinnell who for nearly over 15 years has been the effective leader of the course of unlawful conduct, and, therefore, cannot be trusted to head the reform imposed by this decree.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND OPINIONS

November 27, 1964

Wyzanski, D. J.

There follow in order an introduction, findings of fact, conclusions of law, opinion on liability, and opinion on remedy.

A. Introduction

This is a civil suit wherein the Government complains that Sections 1 and 2 of the Sherman Act [Act of July 2, 1890, c. 647, 26 Stat. 209, 50 Stat. 693, 15 U.S.C. §§ 1, 2] have been violated by Grinnell Corporation, a Delaware corporation with its principal place of business in Providence, Rhode Island, (hereafter called "Grinnell"), and three corporations, a majority of the capital stock of each of which is owned by Grinnell, to wit, American District Telegraph Company, a New Jersey corporation, (hereafter called "ADT"), of whose capital stock Grinnell owns 76%, Holmes Electric Protective Company, a New York corporation, (hereafter called "Holmes"), of whose capital stock [fol. 1272] Grinnell owns 100%, and Automatic Fire Alarm Company of Delaware, a Delaware corporation, (hereafter called "AFA"), of whose capital stock Grinnell owns 89%. All these 3 corporations have their principal place of business in New York. Collectively, the 3 corporations are referred to sometimes as the "affiliates", and sometimes as the "alarm companies."

Complaint, seeking relief under § 4 of the Sherman Act [26 Stat. 209, 15 U.S.C. § 4], was filed April 13, 1961. Extensive pre-trial discovery and frequent pre-trial conferences with the Court, and, above all, the co-operation of informed, industrious, and experienced lawyers, who jointly took 128 depositions (totalling over 8,000 pages), to a large extent disclosed to each other proposed exhibits, entered into 5 stipulations, (totalling 58 pages), and exchange careful, thorough, pre-trial briefs (in excess of 400 pages), enabled the parties at the outset of the trial to lay before the Court 1181 exhibits comprising approximately 15,000 pages. The preliminary procedural and substantive steps reduced the taking of testimony in open Court to six days, from June 15, 1964 to June 24, 1964. The Court, at the

conclusion of the testimony, required each party to use the summer recess to limit to 40 pages the principal portion of its brief, with a right to annex appendices of unlimited length. Oral arguments upon those briefs and replies thereto took place on October 9, 1964.

Before findings, conclusions, and opinions are set forth, this Court takes this opportunity to make explicit certain aspects of its approach to this controversy.

This Court is mindful that in recent years antitrust litigation, particularly Government civil actions alleging violations of § 2 of the Sherman Act, have involved an enormous, nearly cancerous, growth of exhibits, depositions, and *ore tenus* testimony. Few judges who have sat in such cases have attempted to digest the plethora of evidence, or [fol. 1273] indeed could do so and at the same time do justice to other litigation in their courts. Nor is there any sound reason to believe that such extensive presentation accomplishes any important legal or other social end.

Historically, the major explanation of prodigious records probably is the lack of certainty both at the bar and on the bench as to what was the scope of § 2, and, even to some degree, of § 1 of the Act. Fluctuations in Supreme Court interpretation of the statute prevented lawyers no less than laymen from having confidence as to how an antitrust controversy would be viewed in the Supreme Court, and those who were in authority were unwilling prematurely to draw sharp boundaries of relevance and materiality.

Time, however, has hardened the lines of interpretation of the Act. No doubt, courts have been aware that the text of the Sherman Act, *simpliciter*, though it withstood early attacks grounded on the charge that it was so vague as not to meet the due process standard of the Fifth Amendment to the United States Constitution, *Nash* v. *U.S.*, 229 U.S. 373 (1913), would, if enacted in the same words today, without explicit legislative guidance from the debates, the committee reports, the exordium of the statute, and other ancillary sources, not easily hurdle the barrier of the Fifth Amendment, and comply with recent precedents requiring definiteness as a *sine qua non* of valid criminal legislation.

To satisfy both modern judicial susceptibilities, and increased awareness of the right of prospective defendants to clear warning of what constitutes criminal conduct,

courts, while not abandoning the possible *in futuro* widening or deepening of the Sherman Act with the growth of experience, and while not sacrificing the possible stretch of [fol. 1274] the statute in the future to keep pace with any scheme hereafter developed to evade its deliberately prospective broad reach, have tended to lay down, especially in connection with § 1 of the Sherman Act, so-called *per se* rules, (as, for example, the rule invalidating price-fixing agreements made to cover a substantial market), which are relatively precise and which form the basis of virtually irrebuttable charges of violation of the Sherman Act. *U.S.* v. *Paramount Pictures,* 334 U.S. 131; *Schwegmann Bros.* v *Calvert Distillers,* 341 U.S. 384; *U.S.* v. *New Wrinkle, Inc.,* 342 U.S. 371. Such *per se* rules go beyond presumptions, burdens of proof, or like procedural measures. They are substantive glosses constituting clear corrollaries.

With regard to § 2 of the Sherman Act, the trend has been less clear, and has reflected a greater degree of wariness or timidity on the part of judges. Yet in the two decades since the opinion of Judge Learned Hand in *U.S.* v. *Aluminum Co. of America,* 2nd Cir., 148 F.2d 416 (1945), most of the cognoscenti have expected that a day would come when the Supreme Court would announce that where one or more persons acting jointly had acquired so clear a dominance in a market as to have the power to exclude competition therefrom, there was a *rebuttable* presumption that such power had been criminally acquired and was a monopolizing punishable under § 2. To be sure, the putative offender would be allowed to avoid or defeat this presumption if he bore the burden of proving that this share of the market was the result of superior skill, superior products, natural advantages, technological or economic efficiency, scientific research, low margins of profit maintained permanently and without discrimination, legal licenses, or the like. Cf. *U.S.* v. *United Shoe Machinery Corp.,* D. Mass., 110 F. Supp. 295, aff'd 347 U.S. 521. Such a shifting of the burden not merely of going forward, but of proof, such a rebuttable [fol. 1275] presumption rests on the by-now dozens of court records which make it quite clear that it is the highly exceptional case, a *rara avis* more often found in academic groves than in the thickets of business, where monopoly power was thrust upon an enterprise by the economic char-

acter of the industry and by what Judge L. Hand in *Aluminum* called "superior skill, foresight and industry." More than 7 decades of Sherman Act enforcement leave the informed observer with the abiding conviction that durable non-statutory monopolies (ones created without patents or licenses or lasting beyond their term) are, to a moral certainty, due to acquisitions of competitors or restraints of trade prohibited by §1. They are the achievement of the quiet life after the enemy's capitulation or his defeat in inglorious battle.

To this Court it appears that the day has come for it, and more important for counsel, to proceed on the acknowledged principle that once the Government has borne the burden of proving what is the relevant market and how predominant a share of that market defendant has, it follows that there are rebuttable presumptions that defendant has monopoly power and has monopolized in violation of § 2. The Government need not prove, and in a well-conducted trial ought not to be allowed to consume time in needlessly proving, defendant's predatory tactics, if any, or defendant's pricing, or production, or selling, or leasing, or marketing, or financial policies while in this predominant role. If defendant does wish to go forward, it is free to do so and to maintain the burden of showing that its eminence is traceable to such highly respectable causes as superiority Judge Hand characterized the suppositious socially de- in means and methods which are "honestly industrial", as sirable monopolizer.

One other preliminary point does deserve note—and that is the relevance, if such there be, of defendant's intent. The issue is whether when the Government or other plaintiff [fol. 1276] charges a defendant with violation of the Sherman Act the complainant is under a duty to prove that his adversary had either *mens rea* or, more than that, the specific intent to violate the antitrust Acts. So far as concerns a charge of "monopolizing", unlike the lesser offense of "attempting to monopolize", it is not necessary, as both *Aluminum* and *United Shoe* declare, for the complainant to prove more than that defendant intended to engage in the practices which maintained its market power. A defendant who monopolizes has "first of all . . . the intent to do the act, and secondly . . . a knowledge of the circum-

stances that make that act a criminal offense." Patrick [Lord] Devlin, lecture on "Statutory Offenses", republished in *Samples of Lawmaking* [London, 1962], pp. 67-82, at p. 78.

B. Findings of Fact

1. The gist of the Government's complaint is that defendants and co-conspirators (1) have been engaged in an unlawful combination and conspiracy to restrain, and (2) an unlawful combination and conspiracy to monopolize, and (3) have attempted to monopolize, and (4) have monopolized, interstate trade and commerce in what the Government denominates "the accredited central protective service business."

2. The central station protective service (hereafter called "CSPS") business consists of maintenance of a central station, installation and maintenance of hazard detecting devices on the subscribers' premises, connection of these devices to the central station by wires leased from the local telephone company, and receipt and handling of alarms transmitted to the central station from the subscribers' premises.

[fol. 1277] 3. CSPS, at present, involves customer concentration within specific areas. The chief reason is that alerted CSPS employees must promptly reach the scene of the alarm, and the present system does not have scattered task forces. Another reason is that high leased-line costs make it expensive to transmit signals for a great distance. Twenty-five miles from the CSPS central station has become the common radius. But this Court is not persuaded that, with the advance in technology, there are any physical obstacles, such as electrical resistance, which now stand athwart the geographical expansion of central station coverage whenever business advantage, competitive conditions, and prospect of favorable profits make the course expedient.

4. A central service station, in its normal daily service operations, is physically independent of any other central service station. As already noted, its service is summoned, responds, and is consummated usually within a twenty-five mile radius. This is *not* to imply that the ultimate supervision is not nationally directed; nor that the system of

operations, nor that the equipment used, nor the checking of equipment, nor the reports about the system have a purely local, individualized character, origin, or destination. On the contrary, the enterprise in appearance and reality, in financing, selling, advertising, purchasing of equipment, processes of management, and over-all planning is national; though, of course, the impact, as is true of every enterprise, is upon local specific points.

5. By settled practice, universal in the insurance business, underwriters of fire and burglary insurance (hereinafter called "underwriters") allow a reduction of premiums to customers having approved protective signalling systems. To that end, underwriters have established testing laboratories, have adopted standards, have organized periodical inspections, and have offered premium discounts, of almost [fol. 1278] standard nature, based thereon. Discounts accorded to accredited central station service subscribers tend to be noticeably larger than for users of other systems.

6. When a prospective subscriber requests CSPS service, the service company surveys the subscriber's premises, determines the number and type of required protective devices, and estimates the cost of needed equipment and labor plus overhead expenses and often expected profit, all of which are usually used in computing an "installation charge." This charge is normally payable upon completion of the installation. Additional "annual service charges", usually payable periodically in advance, and calculated with reference to the equipment in service, telephone line rental costs, expected service including maintenance costs, and often expected profit, are also charged to the subscriber. Annual service charges are covered by contracts for periods of up to five years. Such a contract normally provides that at its termination the service company has a right to remove the equipment without refunding money or making any other payment to the subscriber.

7. In 1961 ADT provided CSPS to 121 units, located, respectively, in 115 cities, which, in turn, were located, respectively, in 35 states and the District of Columbia. In 92 of those 115 cities ADT has no CSPS competition.

8. Holmes provided CSPS to 14 units, each located in one of 3 cities, —11 in New York City, 2 in Philadelphia, and 1 in Pittsburgh, in all of which it has CSPS competition.

9. AFA provided CSPS to 3 units, each located in one of 3 cities, —1 each in Boston, New York City, and Philadelphia, in all of which it has CSPS competition.

10. As of December 31, 1961 in the United States there were, in addition to the alarm company defendants, 33 CSPS companies approved by one or more underwriters. [fol. 1279] Of those, each of 5 provided CSPS from 2 locations; each of the remaining 28 provided CSPS from only 1 location.

11. Of those 33 CSPS competing companies, each of 7 operated in one of 7 cities without CSPS competition; each of 23 operated in one of 23 cities where it had CSPS competition from one or more of the alarm company defendants; 3 operated in cities where they had CSPS competition from others.

12. Business or other enterprises located in cities where there is CSPS have the option, of course, of using watchmen, watchdogs, automatic proprietary systems confined to one site, (often, but not always,) alarm systems connected with some local police or fire station, often unaccredited CSPS, and often accredited CSPS. There are business or other enterprises which in the same city exercise their options differently for different sites in that city. Thus, the Government itself in Washington uses at some public buildings a proprietary system; at others, accredited CSPS.

13. Examples of a particular enterprise changing from one alarm method to another are recited in the record; but, *significantly,* the preponderant shift is from the less integrated, advanced, expensive, and safe method of proprietary systems to accredited CSPS, thus indicating a customer recognition of a difference in market. This difference, to use a popular analogy, could be compared to moving into the class of the rich by changing from a compact six-cylinder car to a chauffeur-driven sedan. That is, there is a major product difference far transcending the obvious possible minimal cross-elasticity of demand.

14. It is also true that many central station companies, including defendants, furnish other forms of protection as well as accredited central station protective service. But this entry by one company into two or more adjacent markets has no substantial significance in defining either of

[fol. 1280] those markets. Here a comparison may be drawn, by analogy, with the practice of General Motors Corporation in offering customers a choice of a chauffeur-driven Cadillac or a Chevrolet Corvair. General Motors caters both to "the Privileged and the People" who, in Disraeli's phrase, form "Two Nations."

15. In 1960 the alarm company defendants together with all other CSPS companies obtained from United States manufacturers in various states over $12,000,000 worth of protection equipment for installation. According to page 6 of the Reply Brief for defendants, ADT, Holmes, and AFA, all this equipment was "manufactured . . . by the defendants", (presumably overwhelmingly by Grinnell.)

16. In 1961 the alarm company defendants provided CSPS service to thousands of subscribers of whom more than 900 were each located in a state other than the one wherein the servicing station was located. For this type of service the charges in the previous year, 1960, had included $677,598.15 for interstate transmission of signals over wires.

17. Up to this point, most of what has been stated relates primarily to the 3 alarm company defendants which are themselves in the accredited CSPS business. Grinnell, which is not in that business, nonetheless manufactures the alarms, sprinklers, and other equipment which may be denominated the machinery of the business. It is the principal supplier of the dominant companies in the market. And its economic interests as a supplier stretches beyond the immediate purchasers, that is, beyond the alarm companies, to the subscribers for CSPS because, as will be recited in later findings, some of Grinnell's compensation for its equipment takes the form of a share in the revenues received by the alarm companies from the fees paid to them by their subscribers.

18. Were it necessary to make such a finding, this Court would find that a primary motive of Grinnell when it acquired 89% of the capital stock of AFA, and 79% of the [fol. 1281] stock of ADT was to secure an assured outlet for part of Grinnell's manufactured products. Investment purposes were also a motive.

19. However, in courts, unlike on the stage, the drama need not concentrate upon the parties' motives. As ex-

plained in the Introduction to these Findings of Fact, the law does not require even proof of intent, much less proof of a motive, where the wrong charged is monopolization, as distinguished from an attempt to monopolize. Moreover, such intent as must be proved to sustain the charge of an attempt to monopolize, or a conspiracy to monopolize, relates to the purpose *to* monopolize, not to the purpose *of* the monopolization.

20. Hence, it is quite adequate to demonstrate that Grinnell by its mere acquisition of control of companies which in combination have 87% of the accredited CSPS market has shown by its actions that it is possessed by what the mediaevalists called "the lust for power." No doubt, that lust is often in modern times characterized by materialism, that is, by the search for economic advantage, including financial rewards and outlets for manufactured products. Here it is indeed probable that Grinnell's and its president's acquisition of leverage over the market for accredited CSPS was in part motivated by a desire to increase Grinnell's manufacturing business and to assure a quiet market as an outlet for the sale of Grinnell's alarms, sprinklers, and other equipment. Yet, just as the Government has no obligation to prove defendants' motives, so the Court is under no duty to make findings with respect to those springs of action. Speculation as to motives may be favored by playwrights, prosecutors, and jurors, but judges do well to take in a Pickwickian sense Pascal's dictum that "the heart has reasons of which the reason knows not."

[fol. 1282] 21. Grinnell's relations to ADT, AFA, and Holmes are in a formal sense so structured that each of the affiliates of Grinnell had separate officers, and separate boards of directors which have independent identity. But the form is not a true mirror of the substance of the interrelation of the 4 companies.

21a. Since 1919 the balance sheets of Grinnell, submitted as part of Grinnell's reports to its stockholders, have shown, though in unconsolidated form, the results of the operations of all 4 defendants.

22. Since 1948 the president of Grinnell has been James Douglas Fleming, a man who joined Grinnell in 1919, and whose competence, character, and force of leadership stand revealed throughout the whole record, and most particu-

larly in the testimony he candidly gave in open court. Until 1964, he stood in lonely eminence; there were no vice-presidents of Grinnell; nor others who had more than a closely delegated authority. A purely nominal change has been made in the current year. Four men who had been with Grinnell for 30 years but who had no other independent distinction were named vice-presidents.

23. Mr. Fleming, in addition to being president of Grinnell, sits upon the board of directors of each of the 4 defendants; and is chairman of the board of ADT. There is only one fellow director of ADT who is not an officer of Grinnell or of ADT. The situation is not noticeably different in any of the affiliated companies. In only one instance that Mr. Fleming could recall, has a board of directors of one of the affiliated defendants ever vetoed, or rescinded, or overridden any of his or Grinnell's management proposals or plans. In all major operations of all 4 defendants Mr. Fleming has illustrated the Emersonian proverb that "where MacDonald [or, as misquoted in the record (Tr. 732) MacGregor] sits, is the head of the table."

[fol. 1283] 24. The personnel unity achieved through the dominant character of Mr. Fleming is buttressed in many ways. Under allocation agreements, executed in 1907, Grinnell as late as 1960 received over $1,200,000 from revenue produced by contracts made by its affiliates with one or more of the subscribers located in one or more of the 35 states and the District of Columbia. This sum was related to the same type of revenue which in the next year, 1961, produced for ADT, AFA, and Holmes more than $57,000,000 on account of CSPS charges those companies rendered to 93,272 subscribers located in 35 states and the District of Columbia.

25. Moreover, there is a generic similarity, though not an identity, in the contract forms, price lists, and instruction forms used by the 3 alarm company defendants. Many examples of each of these documents are sent regularly from the principal or home offices of the 3 alarm company defendants across state lines.

26. Furthermore, across state lines move to the principal or home offices of the alarm defendants reports, proposed contracts, payments, and other communications. Travel from one state to another on company business takes a substantial part of the working time of the principal officers

of each of the defendants. This travel as well as the written communications produces a high degree of integration of the major policies of the 3 alarm company defendants, and results in effective control by Grinnell and by Mr. Fleming of all 4 defendants, their company subdivisions, their district sales offices, and their personnel.

27. In considering what is the relevant market, or what are the relevant markets, of interstate commerce, many of the factors heretofore detailed require consideration.

[fol. 1284] 28. From th viewpoint of the type of service or product, the relevant market is not, as defendants contend, all protective systems, ranging from individual watchmen on the premises to the elaborate accredited central station alarm systems typified by the alarm company defendants' activities.

29. Quite plainly, non-automatic systems differ not merely in technology but in utility, efficiency, reliability, responsiveness, and continuity from all automatic arrangements. The difference between watchmen and watchdogs, at one end of the spectrum, and electrical systems at the other lies at the very heart of what is meant by such phrases as "the industrial revolution", "the machine age", "technological advance", and the "era of automation." Antitrust judges in their employment, no less than unskilled workers in their unemployment, recognize that markets for services rendered without tools and without education in the handling of them differ *toto mundo* from markets for services related to machines.

30. Nor, from the viewpoint of the type of service or product, can it be validly maintained that the relevant market embraces all automatic systems, including not merely accredited CSPS, but also local, auxiliary, and proprietary alarms and alarm systems unconnected with accredited central stations.

31. The accredited central station business is marked out by the very patterns of the alarm company defendants, who are the dominant factors in the protective industry, as being an identifiably separate market. Illustrative are the subscriber contracts with their installation and annual charges.

32. Many (though by no means all) of those who are engaged in the alarm company business, speaking in their

capacity as experts (not necessarily with the special added status of authorized spokesmen making vicarious admis-[fol. 1285] sions binding defendants) have in correspondence and orally shown that that portion of informed opinion which this Court regards as the more credible recognizes the accredited central station business as a separate type of business.

33. Insurance companies allow their insured a far larger reduction of premium for accredited central station service than for other types of protective service. The annual charge paid by customers is several times as much for accredited central station service as for proprietary systems, and more than for any other types of protection service.

34. There are trade associations uniting under one roof accredited central station protective service companies, and not including the generality of all types of automatic alarm systems.

35. As already noted, customers regard a change from proprietary alarms to CSPS as an entry into what is qualitatively and monetarily a new class, as when one changes from a Volkswagen to a chauffeur-driven Rolls Royce, or from a boarding house to a hotel named in a hotel association listing.

36. Hence, for purposes of the antitrust laws there exists a specific, separate, identifiable, recognized market limited to accredited central service protective systems operated by largely automatic devices.

37. If the market, product-wise, be plainly defined as limited to accredited central station protective service connected with automatic devices, it is hardly less clear that, geographically, because of the very nature of those automatic devices and the services related thereto, and the patterns in which that industry has developed, the market has a national interstate-commerce character.

38. It is not merely a congeries of segregated local or city markets. Of course, in addition to the principal national market, there may well be local markets of limited [fol. 1286] territorial area, or city markets, which in other litigation might be found in themselves to constitute, for purposes of the antitrust laws, definable, separate markets, wherein prohibited monopolies, or prohibited monopolization, or prohibited restraints, or prohibited attempts to

achieve those forbidden ends might be enjoined or punished. But regardless of such local or city markets, there exists a national interstate commerce market in accredited Central Station Protective Services.

39. The existence of a national market is underlined by defendants' own national pattern of business, with its close articulation of control from the pinnacle of Mr. Fleming down the whole range of subordinate officers, and with its constant use of interstate commerce involving equipment, officers, salesmen, correspondence, even to an appreciable extent electric current carrying alarm signals from one state to another.

40. A fire or burglary may be local. Alarms may be sent to a point only a few blocks away. Relief may be dispatched from a local fire or police station. But the system of accredited CSPS rests upon the far-flung structure (a) of national planning, (b) of lapsed agreements covering activities in many states, (c) of inspection, certification, and reduction of rates by national insurers, (d) of defendants' national schedules of prices, rates, and terms, and (e) even, on occasion, of national special discount prices to a particular customer who operates multi-state enterprises.

41. Grinnell and the affiliated companies included in its balance sheet do not pretend to have a purely local status when they solicit customers, or report to stockholders, or raise funds for their business purposes, or advertise their merits, or preen themselves on their conspicuous success.

[fol. 1287] 42. When all the rest can see a typical American national business enterprise flourishing in an interstate market, federal courts too get the signal and can hear the alarm sounded when such a market is subject to restraint of trade or monopolization.

43. From the foregoing detailed facts there emerge as ultimate facts, found by this Court, first, that as the complaint alleges, "the business of supplying and installing protection devices on the premises of subscribers, maintaining such devices and furnishing to subscribers protection from fire, burglary, or other hazards, through central stations accredited for such service by insurance inspecting and rating organizations" is a trade or industry which constitutes part of the commerce among the several states subject to regulation by Congress under Article I, Sec. 8,

cl. 3 of the United States Constitution, and indeed regulated by Congress by virtue of the Sherman Act, and second, that the accredited CSPS business which is performed by each of the 3 alarm defendants and is controlled by defendant Grinnell is, likewise, part of interstate commerce subject to Congressional regulation and indeed regulated by the Sherman Act.

44. During the period 1957-61 defendant alarm companies' share of the total national accredited CSPS market ranged from 87% to 91%; and ADT and Holmes had 87% to 90% of so much of the central station burglar alarm business as was "certificated" by all underwriters' laboratories.

45. However, it is only fair to add that from 1957 to 1961 defendant alarm companies' shares of central station subscribers and of revenue therefrom showed a slightly declining trend. Moreover, there is no persuasive evidence that any particular prospective entrant has been unable to begin operations, or that any specific CSPS firm has failed or been driven out of business. The most that can be said is that some competitors complain of what they [fol. 1288] regard as unsatisfactory profits.

46. Defendant alarm companies do not have unfettered power to control the price of their services. Even where they have no competition from other CSPS companies, they have not always been able to receive the standard they have set for themselves, the so-called "Minimum Basic Rates", (hereafter called "MBR") or annual service charges. This is due to the fringe competition of other alarm or watchmen services.

47. Yet this ceiling imposed by fringe competition and this implied cross-elasticity of demand lose almost all their significance when set against the fact that, because of their national operations, one or more of defendant alarm companies choose in some areas to operate at a loss ADT's own counsel, in both brief and oral argument stressed, paradoxically, that it operated 20 *deficit* offices in cities with no other central station. Counsel seem not to appreciate that this fact is a strong point against defendants. It conclusively proves that defendants enjoy national monopolistic power which permits one of the conspirators to occupy local markets where no independent CSPS station would

long function and to extend to each of them the combination's national monopolistic control. *Hardly any indicium of monopoly power is more persuasive than the continued capacity of the asserted monopolistic combination to sustain offerings at a loss either in particular areas or in particular services or products.*

48. Defendants faced with proof of the overwhelming share of the accredited CSPS business in the hands of the alarm company defendants have offered no evidence to rebut the presumption that this share was the result of an attempt to monopolize and have not sought to maintain their burden of proving that their share is attributable primarily to their skill, efficiency, and foresight, or to like factors of [fol. 1289] obvious social utility. On the contrary, the evidence rather plainly indicates that acquisitions, both within and outside the relevant market, were important sources of the market power achieved by the alarm company defendants.

49. ADT purchased in 1946 for $282,395.02 Reliance Alarm Co., a Detroit company. In 1955 ADT acquired for $300,000 General Alarm Corp. of Boston. It is true that before making the latter purchase ADT informed the Department of Justice; but it is incontrovertible that whatever else the Department's silence indicates, no inference can be drawn that the Department had, or attempted to exercise, authority to treat that disclosure as proof that ADT was growing larger by virtue solely of its skill, efficiency, foresight, or like factors of obvious public benefit. Nor did the Department of Justice suggest that when after acquiring General Alarm Co. of Boston, ADT dismantled it, ADT failed to reveal in the most flagrant way its intent to attempt to monopolize.

50. The Detroit and Boston concerns just mentioned operated approved central station protective systems when they were acquired. Other companies which did not operate such systems and hence admittedly were not in the market directly at issue in this case were also acquired by ADT. In its answer ADT admitted that it acquired 22 protection companies. Going further, ADT's counsel at p. 9 of their Reply Brief admit that ADT purchased and dismantled in 1913 the Still Alarm Co., Cleveland, and in 1959 Federal Automatic Alarms, Albuquerque; and that ADT in 1954

purchased the subscriber equipment of Globe Electric Protection Company, Atlantic City. What is significant is NOT that those 3 concerns fall within or without the relevant market here in issue, for plainly they fell outside that market, but that the acquisitions indicate that ADT's growth, far from being attributable solely to superior techniques and methods of administration and like so-called honestly industrial means, owes more than a little to the [fol. 1290] special kind of appetite which has characteristically revealed a monopolistic temper and explained a monopolistic growth.

51. It is unnecessary to pause for elaborate description of the other acquisitions of ADT or Holmes or AFA, if any, or of the occasional accompanying covenants by sellers not to compete with the alarm company defendants. Enough has been noted to see why it is that defendants have not borne, and cannot bear, their burden of showing that their proportion of the market is a mere tribute to their perfect performance.

51a. Another significant factor in defendants' growth in the share of the national market were the, by-now lapsed agreements during the period 1904-1954 between the alarm company defendants before they were affiliated, or between alarm company defendants and actual or potential competitors. Those agreements provided for the orderly allocation of geographic areas and classes of CSPS. Though the agreements are no longer legally effective, their influence in forming business patterns remains to a discernible extent.

52. One of those agreements was the Burglar Alarm Agreement of September 28, 1906 between ADT and Holmes, then unaffiliated. ADT conveyed to Holmes all burglar alarm business, including subscriber contracts and installed devices, in New Jersey, Maryland, Delaware, the District of Columbia, 8 counties of New York (New York, Richmond, Kings, Queens, Nassau, Suffolk, Westchester, and Rockland), 6 counties in Pennsylvania (Philadelphia, Delaware, Chester, Montgomery, Bucks, and Allegheny), and so much of Connecticut as lies within 33 miles of New York City. In those areas ADT agreed forever to refrain from engaging in central station burglar alarm service. Holmes agreed forever to refrain from engaging in any type of protection

[fol. 1291] service outside of those areas; and within those areas to limit itself to burglar alarm service, and, in the case of financial institutions, to nightwatch service. Most of the pattern thus established continued, without legal buttress, at least until this suit was brought,—for, as of December 31, 1961, Holmes did not render service outside of the defined area; nor within the area did it serve a single central station fire alarm subscriber.

53. Another series of agreements were the Fire Alarm Agreements of April 29, 1907 among Grinnell, ADA, AFA, and the non-defendant Automatic Fire Protection Company (hereafter called "AFP"), all then unaffiliated. (a) AFA received an exclusive right to contract with subscribers for central station sprinkler supervisory and waterflow alarm service (hereafter called "SSWF") for Greater New York, Philadelphia, and Boston and Charlestown, Massachusetts. AFA agreed to refrain from engaging in nightwatch and burglar alarm service in those four cities, and to refrain from all other types of CSPS elsewhere in the United States. (b) AFP received an exclusive right to contract for SSWF service elsewhere than in the 4 named cities. (c) ADT received the exclusive right to render nightwatch and burglar service throughout the United States, and agreed to permit AFA and AFP in their respective territories to connect SSWF alarm service to ADT's central stations. (d) Grinnell agreed to furnish all SSWF alarms for contracts obtained by AFA and AFP, and itself to refrain from invading the assigned territories. (e) Among the 4 named companies provisions were made for AFA to receive 25% of the SWWF alarm revenue from its territory; ADT to receive 50% of the SWWF alarm revenue from both AFA and AFP territories; and Grinnell to receive 25% of the SWWF alarm revenue from both AFA and AFP territories. January 1, 1949 ADT purchased all AFP's rights under the agreements. Much of the pattern established under the [fol. 1292] 1907 agreements continued, without legal buttress, at least until this suit was brought,—for, as among defendants, ADT continues as the exclusive source of central station nightwatch and burglar alarm service, AFA as the exclusive source of central station nightwatch and burglar alarm service, AFA as the exclusive source of cen-

tral station fire alarm service in New York, Philadelphia, and Boston; and Grinnell does not furnish the types of service originally precluded by the 1907 agreements.

54. Grinnell and ADT and the Rhode Island Electric Protective Company (hereafter called "RIEP") have agreed that RIEP shall have the exclusive right to render CSPS within Rhode Island, at prices not less than those established by ADT for like service, and with certain devices supplied by Grinnell. RIEP shares its revenue with ADT and Grinnell. This agreement is presently effective. Admittedly this relationship is a mere makeweight in indicating Grinnell's and ADT's role in controlling the approved CSPS market, its monopolistic power therein, and its intent to monopolize.

55. Although defendants have a "Schedule of Minimum Basic Service Charges" and "ceiling prices" which constituted their standard rates, they depart therefrom when they encounter actual or threatened effective competition. Departures have included (a) frequent quotation of prices with an annual service charge less than 100% but not less than 80% of the minimum basic rate, and with an advance service charge less than 100% but not less than 60% of the minimum basic charge, (b) occasional installation of CSPS without charge, (c) rarely, successive bids each, progressively, lower than the so-called standard minimum basic rates, (d) at least once, the reduction of rates at all locations of a chain-business account to preclude a competitor of defendants from securing in one city an account of that chain, and (e) infrequently, the deferment of prompt pay-[fol. 1293] ment of installation charges. Sometimes these departures have merely met the prices of competitors; but, on other occasions, rare though they were, the departures undercut or beat competitors' prices.

C. Conclusions of Law

1. From the foregoing findings of fact it is transparent that during their growing period the alarm company defendants in several respects violated the restraint of trade provisions of Section 1 of the Sherman Act.

2. The alarm company defendants engaged in *per se* violations of Section 1 when they, being the most substantial and the recognized dominant enterprises in the CSPS

industry, entered into written agreements, now admittedly several decades old and formally no longer effective, which allocated geographic markets and classes of customers and fixed minimum prices for types of service. Grinnell formally took a share directly or indirectly in the revenues from these agreements. When the agreements expired, defendants, including Grinnell, continued most of the arrangements once founded on those unlawful legal instruments.

3. Because of the formal expiration of the agreements, it, *conceivably,* might be too late for the Government now to seek against defendants relief from the legal instruments as such. But the folds in the industrial scene have remained even though the technical pressure of the legal instruments has been withdrawn. Channels of activity begun under legal formalities became habitual, and, even after the formalities had expired, in most cities have continued to carry the same menace to free trade. Injunction against continued adherence to the patterns formed in violation of law is not merely appropriate but necessary to accomplish the declared objects of the antitrust laws.

[fol. 1294] 4. Furthermore, the alarm company defendants resorted to restraints of trade prohibited by Section 1 of the Sherman Act when, faced with competition, they, being in a dominant position, manipulated their own prices to forestall competition. Injunction against pricing discriminatorily utilized by a monopolistic combination to forestall competition is appropriate and necessary.

5. The restraints of trade just mentioned were a chief avenue by which the alarm company defendants previously attempted to monopolize, and now do conspire to monopolize, and do monopolize, the national market in the accredited CSPS industry, all in violation of Section 2 of the Sherman Act.

6. Perhaps even more effective as a means used to attempt to monopolize, and eventually to monopolize, the industry, in violation of Section 2 of the Sherman Act, were the alarm company defendants' acquisitions of competing companies, more particularly in the light of the dismantling of some of the acquired service stations.

7. Grinnell's acquisition of so high a percentage of stock of the companies engaged in the monopolization, and Grinnell's direction of the policies of the 4 companies as a whole

toward the maintenance of the monopolization constituted a violation of Section 2.

D. Opinion on Liability

1. At this late date it is hardly necessary to do more than briefly recapitulate what is meant in Sherman Act parlance by the concepts "to attempt to monopolize", or a "conspiracy to monopolize", or "to monopolize."

2. To succeed in a Section 2 case plaintiff must prove that the putative monopolist or monopolists sought to achieve or achieved the economic power, even though unexercised, to control prices or production in a relevant market, [fol. 1295] or to exclude competition therefrom. Proof may be direct or indirect.

3. One indirect method to prove the requisite power is to show defendants' occupancy of an overwhelming (but not mathematically definable) percentage of the market, unless that position,—or, as it is called, "share of the market",—is shown by the supposed monopolist to be attributable exclusively to his skill, efficiency, foresight, or like affirmatively laudable business conduct. Unless he maintains the burden of proving himself within the exception, the occupant in the dominant position stands condemned.

4. What degree of occupancy, what share of the market, is indicative of monopolistic control depends on a judgment based upon all aspects of the particular market under review. But while close cases can be supposed, no informed student of prior decisions involving Section 2 of the Sherman Act could doubt that on this record defendants occupy a share of the CSPS market far beyond the line justifying a presumption of monopolistic power. The percentage is so high here as to need no explication. And, as the conclusions of law already set forth state, this share of the market rests not on the skill, efficiency, and foresight of defendants, not even on their neutrally normal business methods, but on violations of *per se* rules governing restraints of trade and on acquisitions indicating that that growth was a response to external grasp, not to internal grip.

5. Nor in this case need we consider whether there are present all the various policy considerations advanced from

time to time by legislators, judges, and academicians to justify or interpret the antitrust prohibition of monopoly.

6. Of course, in the relatively small accredited CSPS industry it would be nearly ridiculous to rest the present application of the Sherman Act upon a literal interpretation [fol. 1296] of the economic and philosophical postulates offered in great antitrust cases in celebrated opinions by Mr. Justice Brandeis, Mr. Justice Black, Mr. Justice Douglas, Mr. Justice Brennan, or Judge Learned Hand. Here we are dealing with an industry which as a whole involves fewer individuals and less capital than, let us say, any one of the three leading manufacturers of automobiles, of steel, or of electronics, or any one of the three largest chain retail store systems, insurance companies, or banks. The activities of Grinnell and its affiliates, no matter what their intent or their achievement, could hardly be said to have a significant potential effect comparable to those giants' maneuvers in, at least by possibility, dwarfing men, or interfering with their creative, political, or spiritual possibilities, or determining their economic fate, or depriving them of the illusion or reality of free choice in an open society.

7. What justifies this application of Section 2 of the Sherman Act to these defendants is not avoidance of "the curse of bigness", or the fear that men will be converted into robots, or the dread that society will be stratified into trusts more burdensome than feudalism, or colonialism, or socialism, or communism, or some other despised polity, or a concern lest giants larger than the state itself shall lead us into tyranny or into the need of a socialistic regimen as an antidote to private despotism.

8. It is even doubtful whether we can say that here we have the danger of a business becoming slothful, routinized, sleepy, or wanting in alertness, initiative, and progressiveness, as a result of the quiet life sought and usually achieved by a monopolist.

9. Nor can it be truly asserted that here we are faced in microcosm with Acton's fancied or real disease,—the corruption of power. Mr. Fleming and his associates are not [fol. 1297] likely to be on anyone's list of Napoleons. Nor is Grinnell's corporate power "corrupt" or "imperial."

10. In cases like this where the Sherman Act ban against monopolizing is invoked against defendants who have secured dominance of a small industry by imposing unlawful restraints of trade and by a steady stream of acquisitions of competitive enterprises, the usual rhetoric is quite out of place. All that is at stake here is the rooting out of a plant of minor importance in the rich forest of the American economy, not because it overshadows all of us, or even many of us, but because it represents an ultimate growth from seeds which have been declared unlawful. Congress in Section 1 of the Sherman Act outlawed the means and in Section 2 outlawed the end achieved by those means.

11. In most, though not all, situations relief against the monopolization forbidden by Section 2 could be achieved through a proceeding under Section 1 couched in the form of an attack on restraints of trade. But this is not always true. Proceedings under Section 1 may come too late: for example, the formal restraints may have been withdrawn, or laches may have intervened, or, as in *U.S.* v. *United Shoe Mach. Corp.*, D. Mass. 110 F. Supp. 295, hoary precedents sustaining as valid what the current law now regards as undoubted restraints of trade may preclude the Government from securing an injunction against the restraints as such. Yet though the Government may be barred from getting under Section 1 relief directly against the restraints, it may, nonetheless, under Section 2 get relief against the consequences of the restraints if, but, of course, only if, they have gone so far as to involve a continuing monopolization. Having failed to nip the bud, the Government may still pluck the flower of evil.

[fol. 1298] E. Opinion on Remedy

1. Even if this is not a "big case" in any sense (except in the Government's unnecessary volume of exhibits disclosing chiefly the Department of Justice's unwillingness to accept the notion that in the second half of this Century, lower Courts, educated by the Supreme Court, can get the point that an antitrust case really turns on a relatively manageable set of facts, on a few by-now clear legal issues, and on a presentation worthy of Mr. Justice Holmes' advice to "Strike for the jugular"), nonetheless, the findings of fact

and the conclusions of law demand a decree of scope and strength.

2. This is no border-line case. A man of the capacity, sophistication, and, possibly, risk-taking temperament of Mr. Fleming cannot have been ignorant that the companies he controlled had in the most flagrant way violated the clearest aspects, the so-called *per se* rules, of the Sherman Act and were continuing to follow patterns conceived in crime. Maybe he shrewdly weighed business advantage against business disadvantage, and with keen appraising eye estimated the law's delays, the fluctuating policies of the Department of Justice, the improbability of private suitors with adequate funds and resolution, the reluctance of courts to apply surgical measures to cut deep into already established industrial patterns, and, in any event, the plausibility of the oft-cited, if strangely inapt, metaphor that one cannot unscramble eggs.

3. Whatever may have been the calculation of defendants or their officers, this Court has determined that this case requires a three-pronged judgment adequate to uproot the evil of a long-effective monopolization.

[fol. 1299] 4. First, defendants, including the controlling Grinnell Corporation, shall be specifically directed to cease and desist from restraints of trade in which the record shows that the alarm companies have engaged directly or indirectly. This decretal provision rests expressly on the ground that the restraints were from their first imposition a violation of Section 1, and, alternatively as well as cumulatively, on the ground that they are a continuing cause of the monopolizing prohibited by §2 of the Sherman Act. To make effective this cease and desist order which, *inter alia*, precludes the alarm company defendants from manipulating prices and terms of sale or servicing so as to bring against competitors defendants' monopolistic power, the alarm company defendants shall be required, until further order of the Court, to file with the Antitrust Division of the Department of Justice such *standard* lists of prices and terms of sale or servicing as, *at their uncontrolled pleasure*, they from time to time adopt, and also to file a record of every quotation, written or oral, departing from those standard lists, such filing to reach the Division within two weeks of

the quotation. It is not the purpose of this direction to give the Government the right to fix or even to object to any alarm company's standard price list. It may select any figures it likes. And at any time it may change the standard schedule, if this is done for all customers of like kind. But if an alarm company defendant seeks to depart in individual instances from its standard schedule, then it must report the departure and run the risk of being charged with invidious, illegal discrimination. The cease and desist order shall prohibit each defendant from acquiring the stock, assets, or business of enterprises in the accredited CSPS industry. External growth is the badge of the monopolist, as internal growth is the mark of the free life.

[fol. 1300] 5. Second, no later than April 1, 1966 Grinnell shall file with this Court a plan of divestiture under which it shall dispose of all of its stock in each of the other defendant companies. Such plan may, at the election of Grinnell, provide for the stock to be sold, or for the stock to be distributed to shareholders of Grinnell, or for some combination or reasonable variation of those two methods. The date is purposely set far ahead to permit an appeal to the Supreme Court, and to let defendants consider all tax and corporate problems.

6. Third, to insure that the reforms imposed by this decree are not thwarted by a leader of great capacity but of less than an admirable record of compliance with well-known prescriptions of antitrust law, and to guarantee that there is an entirely effective breaking-up of the channels of restraint and monopolization which the present management of Grinnel has dug so deep into the pattern of the accredited CSPS industry, and to make certain that the general public is not further prejudiced by the continued management of defendants by one who has demonstrated defiance of legal prohibitions, no defendant, after April 1, 1966, shall continue in employment as officer, director, employee, consultant, agent, or otherwise James Douglas Fleming; but nothing herein shall preclude any defendant from fulfilling any pension or like purely financial agreement it now has with Mr. Fleming. Full notice that this Court contemplated this decretal provision was given to defendants by this Court during the trial and on the very day when Mr. Fleming gave his extensive, uninterrupted account of his role in the

conspiratorial combination. This provision shall not be construed as in any respect retroactive or punitive; its interpretation shall be strictly prospective and prophylactic; nor shall it be regarded as directed against Mr. Fleming, but against defendants' use of Mr. Fleming, the leader who [fol. 1301] brought them to this end and cannot be expected to regard a reversal of his policies as suitable marching orders. While this Court does not feel that it can leave Mr. Fleming in the saddle, there is not intended in this decretal provision, or in any other part of this opinion and judgment any suggestion that Mr. Fleming lacks financial integrity or honesty of the usual type. He is an "honest man" after the manner of Theodore Roosevelt or Norman Hapgood. See Learned Hand, on Robert P. Patterson, in *The Spirit of Liberty* ed. by Irving Dilliard, [Vintage Books, N. Y. 1959 ed.], pp. 200-208, at page 205. He is undoubtedly a man whose virtue the Scotch would appreciate, and of a VIRTU the Italians would applaud. But he appears on this record to have been for well over a decade and a half the vigorous captain of the defendants' conspiracy to monopolize.

Judgment in accordance with findings of fact, conclusions of law, and opinions on liability and remedy.

[fol. 1301a] [File endorsement omitted.]

[fol. 1302] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 2785

UNITED STATES OF AMERICA,

v.

GRINNELL CORPORATION, AMERICAN DISTRICT TELEGRAPH COMPANY, HOLMES ELECTRIC PROTECTIVE COMPANY, and AUTOMATIC FIRE ALARM COMPANY OF DELAWARE

FINAL DECREE—November 27, 1964

This cause having come on to be heard, and the Court having fully considered the evidence and arguments, and having filed its Findings of Fact, Conclusions of Law, and Opinions on Liability and Remedy, it is hereby

Ordered, adjudged, and decreed that:

1. Grinnell Corporation (herinafter called Grinnell) and the three Alarm Company Defendants (as they are hereinafter called), American District Telegraph Company, Automatic Fire Alarm Company of Delaware, and Holmes Electric Protective Company are, severally and jointly, found to have violated §1 of the Sherman Act by restraining, and continuing to restrain, trade in the national market of insurance accredited central station protective service (hereinafter called the "designated market"), and to have violated §2 of the Sherman Act by attempting to monopolize, by conspiring to monopolize, and by monopolizing that designated market.

2. Grinnell and the Alarm Company Defendants and all acting in behalf of them or any of them are hereby enjoined from further restraining trade, or attempting or combining to restrain trade, in that designated market and from further attempting to monopolize, or conspiring to monopolize, or monopolizing that designated market. To make this provision effective, each of the Alarm Company Defendants [fol. 1303] shall, until further order of the Court, file with the Antitrust Division of the Department of Justice such standard lists of prices and terms of sale or servicing as, at its uncontrolled pleasure, it from time to time adopts, and

also to file a record of every quotation, written or oral, departing from those standard lists, such filing to reach the Division within two weeks of the quotation. Neither Grinnell nor any of the Alarm Company Defendants shall acquire the stock, assets, or business of enterprises in the designated market.

3. No later than April 1, 1966 Grinnell shall file with this Court a plan of divestiture under which it shall dispose of all of its stock in each of the Alarm Company Defendants. Such plan may, at the election of Grinnell, provide for the stock to be sold, or for the stock to be distributed to shareholders of Grinnell, or for some combination or reasonable variation of those two methods.

4. To insure the effective performance of this decree, neither Grinnell nor any of the Alarm Company Defendants shall, after April 1, 1966, continue in employment, or employ, James Douglas Fleming as officer, director, employee, consultant, agent, or otherwise. Nothing herein shall prohibit any defendant from fulfilling any pension or like purely financial agreement it now has with Fleming; nor shall anything herein require Fleming to divest himself of any security, stock, or bond in or of any company, whatsoever.

5. Defendants shall pay the costs of this case.

6. Jurisdiction of this cause is retained for the purpose of enabling any party to apply to this Court for further orders or directions for the correction, construction, or execution of this Decree, including, without limiting the generality of the foregoing the implementation of the divestiture provided above.

November 27, 1964, 9:00 A.M.

Charles E. Wyzanski, Jr., United States District Judge for The District of Massachusetts, sitting by special designation as a Judge of The United States District Court for The District of Rhode Island.

[fol. 1303a] [File endorsement omitted.]

[fol. 1304] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 2785

[Title omitted.]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed January 25, 1965

I. Notice is given that the plaintiff, the United States of America, hereby appeals to the Supreme Court of the United States from the final decree entered in this action November 27, 1964.

This appeal is taken pursuant to 15 U.S.C. 29.

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include therein the entire record before the district court, including all papers filed with the Clerk of the court in this proceeding, the transcript of the trial proceedings, all exihibits submitted by the parties, all briefs and proposed decrees submitted by the parties, and this notice of appeal.

III. The trial court found that the defendants had violated both Sections 1 and 2 of the Sherman Act. The question presented is whether the decree entered by the trial court granted relief adequate to redress the violations.

/s/ Robert B. Hummel, /s/ Gerald Kadish, Attorneys, Department of Justice, Washington, D. C. 20530.

Dated: January 25, 1965.

[fols. 1305-1306] Certificate of Service (Omitted in printing.)

[fol. 1307] [File endorsement omitted.]

[fol. 1308] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 2785

[Title omitted]

NOTICE OF APPEAL OF DEFENDANT GRINNELL CORPORATION TO THE SUPREME COURT OF THE UNITED STATES—Filed January 25, 1965

I. Notice is hereby given that defendant Grinnell Corporation ("Grinnell") hereby appeals to the Supreme Court of the United States from the final judgment and decree entered in this action by the District Court on November 27, 1964, and from each and every part thereof.

This appeal is taken pursuant to 15 U.S.C. § 29 and 28 U.S.C. § 2101(b).

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include therein the entire record before the District Court, including all papers filed with the Clerk of the Court in this action and this Notice of Appeal.

[fol. 1309] III. The following questions are presented by this appeal:

1. Whether the District Court erred in adjudicating that Grinnell has violated and continues to violate Sections 1 and 2 of the Sherman Act.

2. Whether the District Court's purported findings of fact are not clearly erroneous in the absence of basis in the record for its findings, *inter alia*:

(a) That defendants' national pattern of business is characterized by a close articulation of control by Grinnell;

(b) That Grinnell "is possessed by what the medievalists called 'the lust for power' ";

(c) That a substantial portion of the working time of the principal officers of Grinnell is spent in travel or other activities on business connected to the designated market;

(d) That Grinnell is the principal supplier of the dominant companies in the central station protective service business;

(e) That Grinnell's management has made proposals or plans which in only one instance could be recalled to have been voted down by the board of directors of an affiliated defendant;

[fol. 1310] (f) That incurring deficits in some cities is conclusive proof of national monopoly power; or

(g) That Grinnell agreed to refrain from invading assigned territories under agreements of April 29, 1907.

3. Whether the District Court erred in respect to any or all of the following:

(a) Imposing on Grinnell, by post-trial ruling, a vaguely and variously defined burden of proof, and finding that Grinnell had not discharged such burden;

(b) Setting the action for trial on only eighteen days' notice, without prior warning to the parties and without adequate pre-trial procedures to set forth and narrow the issues to be tried, in spite of the complexity of the issues, the volume of the documents designated as exhibits, and other circumstances making such interval inadequate to complete final trial preparation;

(c) Failing to disqualify itself in spite of having formed a conviction on the merits prior to the reception of evidence;

(d) Accepting in evidence against Grinnell every item of evidence tendered by plaintiff, including hearsay evidence not binding on Grinnell and statements of alleged co-conspirators without any foundation having been laid by independent evidence of the alleged conspiracy or Grinnell's connection to it;

[fol. 1311] (e) Making Grinnell vicariously liable for every act of its co-defendants without any foundation for ignoring the separate corporate entities of the several defendants; or

(f) Failing to give due consideration to the evidence and arguments presented and basing its decision upon

speculation rather than solely upon the law and facts in evidence.

4. Whether the District Court erred in respect to any or all of the following:

(a) Requiring Grinnell to divest itself of all its present interest in the central station protective service business by divestiture of all stock interests in the other defendants, and enjoining Grinnell from any future acquisition of stock, assets or business of enterprises in the designated market;

(b) Requiring Grinnell to terminate the employment of James Douglas Fleming, and not to engage him as officer, director, employee, consultant, agent or otherwise at any time in the future in the absence of findings of facts or conclusions of law which could serve as a basis therefor; or

(c) Enjoining Grinnel in unclear and imprecise terms from restraining trade or monopolizing, or attempting or conspiring to restrain trade or monopolize in the designated market.

[fol. 1312] 5. Whether the District Court has not in respect to one or more of the foregoing:

(a) Deprived Grinnell of its right under the Fifth Amendment to the United States Constitution not to be deprived of liberty or property without due process of law, or to suffer its property to be taken for public use without just compensation;

(b) Deprived Grinnell of its right to a fair trial on the basis of matters properly admitted in evidence by an impartial trier of the facts;

(c) Misinterpreted and misapplied the Sherman Act and applicable equitable or jurisdictional principles and made erroneous inferences from the facts of record;

(d) Abused its discretion;

(e) Failed to respect the rules of evidence and the requirements of law and the Federal Rules of Civil Procedure with respect to findings of fact and conclusions of law; or

(f) Departed so far from the accepted and usual course of judicial proceedings as to call for an exercise of the power of supervision of the Supreme Court [fol. 1313] of the United States.

/s/ Roger T. Clapp, Attorney for Defendant Grinnell Corporation, Address: 240 West Exchange Street, Providence, R. I., 401 TE 7-1000. /s/ Denis G. McInerney, Attorney for Defendant Grinnell Corporation, Address: 80 Pine Street, New York, N. Y. 10005, 212 WH 4-7400.

[fols. 1314-1315] Proof of Service [Omitted in printing.]

[fol. 1316] [File endorsement omitted.]

[fol. 1317] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 2785

[Title omitted]

NOTICE OF APPEAL OF DEFENDANT HOLMES ELECTRIC PROTECTIVE COMPANY TO THE SUPREME COURT OF THE UNITED STATES—Filed January 25, 1965

I. Notice is hereby given that defendant Holmes Electric Protective Company ("Holmes") hereby appeals to the Supreme Court of the United States from the final judgment and decree entered in this action by the District Court on November 27, 1964, and from each and every part thereof.

This appeal is taken pursuant to 15 U.S.C. § 29 and 28 U.S.C. § 2101(b).

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the

Supreme Court of the United States, and include therein the entire record before the District Court, including all papers filed with the Clerk of the Court in this action and this Notice of Appeal.

[fol. 1318] III. The following questions are presented by this appeal:

1. Whether the District Court erred in concluding and adjudicating that Holmes has violated and continues to violate Sections 1 and 2 of the Sherman Act.

2. Whether the District Court's purported findings of fact are not clearly erroneous in the absence of basis in the record for its findings, *inter alia*:

(a) That Holmes is engaged in a national pattern of business characterized by a close articulation of control by Grinnell Corporation;

(b) That there is a generic similarity in the contract forms, price lists, and instruction forms used by Holmes, American District Telegraph Company, and Automatic Fire Alarm Company of Delaware, and that such similarity supports a conclusion that Holmes has violated the Sherman Act;

(c) That Grinnell Corporation is the principal supplier of Holmes.

(d) That the accredited central station business is a separate type of business;

(e) That incurring deficits in some cities is conclusive proof of national monopoly power;

[fol. 1319] (f) That Holmes' share of the designated market was the result of an attempt to monopolize;

(g) That acquisitions, both within and outside the relative market, were important sources of Holmes' market power;

(h) That agreements of April 29, 1907 to which Holmes was not a party had an influence in forming business patterns of Holmes; or

(i) That American District Telegraph Company or Automatic Fire Alarm Company of Delaware are, as among defendants, the exclusive source or sources of central station nightwatch and burglar alarm service in Philadelphia and New York.

3. Whether the District Court erred in respect to any or all of the following:

(a) Enjoining Holmes from any future acquisition of stock, assets or business of enterprises in the designated market;

(b) Enjoining Holmes in unclear and imprecise terms from restraining trade or monopolizing, or attempting or conspiring to restrain trade or monopolize in the designated market;

(c) Requiring Holmes to file with the Antitrust Division of the Department of Justice standard lists [fol. 1320] of prices and terms of sale and servicing, and a record of every quotation, written or oral, departing from those standard lists, within two weeks of the quotation; or

(d) Issuing further injunctions affecting Holmes.

4. Whether the District Court erred in respect to any or all of the following:

(a) Imposing on Holmes, by post-trial ruling, a vaguely and variously defined burden of proof, and finding that Holmes had not discharged such burden;

(b) Setting the action for trial on only eighteen days' notice, without prior warning to the parties and without adequate pre-trial procedures to set forth and narrow the issues to be tried, in spite of the complexity of the issues, the volume of the documents designated as exhibits, and other circumstances making such interval inadequate to complete final trial preparation;

(c) Failing to disqualify itself in spite of having formed a conclusion on the merits prior to the reception of evidence;

(d) Accepting in evidence against Holmes every item of evidence tendered by plaintiff, including hear- [fol. 1321] say evidence not binding on Holmes and statements of alleged co-conspirators without any foundation having been laid by independent evidence of the alleged conspiracy or Holmes' connection to it;

(e) Making Holmes vicariously liable for every act of its co-defendants without any foundation for ignor-

ing the separate corporate entities of the several defendants; or

(f) Failing to give due consideration to the evidence and arguments presented and basing its decision upon speculation rather than solely upon the law and facts in evidence.

5. Whether the District Court has not in respect to one or more of the foregoing:

(a) Deprived Holmes of its right under the Fifth Amendment to the United States Constitution not to be deprived of liberty or property without due process of law, or to suffer its property to be taken for public use without just compensation;

(b) Deprived Holmes of its right to a fair trial on the basis of matters properly admitted in evdience by an impartial trier of the facts;

(c) Misinterpreted and misapplied the Sherman Act and applicable equitable or jurisdictional principles [fol. 1322] and made erroneous inferences from the facts of record;

(d) Abused its discretion;

(e) Failed to respect the rules of evidence and the requirements of law and the Federal Rules of Civil Procedure with respect to findings of fact and conclusions of law; or

(f) Departed so far from the accepted and usual course of judicial proceedings as to call for an exercise of the power of supervision of the Supreme Court of the United States.

/s/ Matthew W. Goring, Attorney for Defendant Holmes Electric Protective Company, Address: Industrial Bank Building, Providence, R. I., 401 DE 1-2400.

[fols. 1323-1324] Proof of Service [Omitted in printing.]

[fol. 1325] [File endorsement omitted.]

[fol. 1326] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 2785

[Title omitted]

NOTICE OF APPEAL OF DEFENDANT AUTOMATIC FIRE ALARM COMPANY OF DELAWARE TO THE SUPREME COURT OF THE UNITED STATES—Filed January 25, 1965

I. Notice is hereby given that defendant Automatic Fire Alarm Company of Delaware ("AFA") hereby appeals to the Supreme Court of the United States from the final judgment and decree entered in this action by the District Court on November 27, 1964, and from each and every part thereof.

This appeal is taken pursuant to 15 U.S.C. § 29 and 28 U.S.C. § 2101(b).

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include therein the entire record before the District Court, including all papers filed with the Clerk of the Court in this action and this Notice of Appeal.

[fol. 1327] III. The following questions are presented by this appeal:

1. Whether the District Court erred in concluding and adjudicating that AFA has violated and continues to violate Sections 1 and 2 of the Sherman Act.

2. Whether the District Court's purported findings of fact are not clearly erroneous in the absence of basis in the record for its findings, *inter alia*:

(a) That AFA is engaged in a national pattern of business characterized by a close articulation of control by Grinnell Corporation;

(b) That there is a generic similarity in the contract forms, price lists, and instruction forms used by AFA, American District Telegraph Company, and Holmes Electric Protective Company, and that such similarity supports a conclusion that AFA has violated the Sherman Act;

(c) That Grinnell Corporation is the principal supplier of AFA;

(d) That incurring deficits in some cities is conclusive proof of national monopoly power;

(e) That AFA's share of the designated market was the result of an attempt to monopolize;

[fol. 1328] (f) That acquisitions, both within and outside the designated market, were important sources of AFA's market power;

(g) That an agreement of September 28, 1906, between American District Telegraph Company and Holmes Electric Protective Company, had an influence in forming business patterns of AFA; or

(h) That AFA is, as among defendants, the exclusive source of central station nightwatch and burglar alarm and fire alarm service in New York, Philadelphia and Boston.

3. Whether the District Court erred in respect to any or all of the following:

(a) Enjoining AFA from any future acquisition of stock, assets, or business of enterprises in the designated market;

(b) Enjoining AFA in unclear and imprecise terms from restraining trade or monopolizing, or attempting or conspiring to restrain trade or monopolize in the designated market;

(c) Requiring AFA to file with the Antitrust Division of the Department of Justice its standard lists of prices and terms of sale and servicing, and a record of every quotation, written or oral, departing from those standard lists, within two weeks of the quotation; or

[fol. 1329] (d) Issuing further injunctions affecting AFA.

4. Whether the District Court erred in respect to any or all of the following:

(a) Imposing on AFA, by post-trial ruling, a vaguely and variously defined burden of proof, and finding that AFA had not discharged such burden;

(b) Setting the action for trial on only eighteen days'

notice, without prior warning to the parties and without adequate pre-trial procedures to set forth and narrow the issues to be tried, in spite of the complexity of the issues, the volume of the documents designated as exhibits, and other circumstances making such interval inadequate to complete final trial preparation;

(c) Failing to disqualify itself in spite of having formed a conclusion on the merits prior to the reception of evidence;

(d) Accepting in evidence against AFA every item of evidence tendered by plaintiff, including hearsay evidence not binding on AFA and statements of alleged [fol. 1330] co-conspirators without any foundation having been laid by independent evidence of the alleged conspiracy or AFA's connection to it;

(e) Making AFA vicariously liable for every act of its co-defendants without any foundation for ignoring the separate corporate entities of the several defendants; or

(f) Failing to give due consideration to the evidence and arguments presented and basing its decision upon speculation rather than solely upon the law and facts in evidence.

5. Whether the District Court had not in respect to one or more of the foregoing:

(a) Deprived AFA of its right under the Fifth Amendment to the United States Constitution not to be deprived of liberty or property without due process of law, or to suffer its property to be taken for public use without just compensation;

(b) Deprived AFA of its right to a fair trial on the basis of matters properly admitted in evidence by an impartial trier of the facts;

(c) Misinterpreted and misapplied the Sherman Act and applicable equitable or jurisdictional principles and made erroneous inferences from the facts of record; [fol. 1331] (d) Abused its discretion;

(e) Failed to respect the rules of evidence and the requirements of law and the Federal Rules of Civil Procedure with respect to findings of fact and conclusions of law; or

(f) Departed so far from the accepted and usual course of judicial proceedings as to call for an exercise of the power of supervision of the Supreme Court of the United States.

/s/ Matthew W. Goring, Attorney for Defendant, Automatic Fire Alarm Company of Delaware, Address: Industrial Bank Building, Providence, R. I., 401 DE 1-2400.

[fols. 1332-1333] Proof of Service [omitted in printing.]

[fol. 1334] [File endorsement omitted.]

[fol. 1335] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Civil Action No. 2785

[Title omitted]

NOTICE OF APPEAL OF DEFENDANT AMERICAN DISTRICT TELEGRAPH COMPANY TO THE SUPREME COURT OF THE UNITED STATES—Filed January 26, 1965

I. Notice is hereby given that defendant, American District Telegraph Company ("ADT"), hereby appeals to the Supreme Court of the United States from the final judgment and decree entered in this action by the District Court on November 27, 1964.

This appeal is taken pursuant to 15 U.S.C. §§ 28 and 29.

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript all of the record before the District Court, including all papers filed with the Clerk of this Court, the plead-
[fol. 1336] ings, transcript of testimony, exhibits, stipula-

tions, judgment and decree, together with this Notice of Appeal.

III. The following questions are presented by this appeal:

a. Whether the District Court erred in concluding that ADT, in asserted combination and conspiracy with the other defendants, ADT's parent corporation and its other subsidiaries, violated and continues to violate Sections 1 and 2 of the Sherman Act.

b. Whether the District Court erred in holding, after trial, that ADT and the other defendants had, and had failed to meet, the burden of proving that they have not monopolized in violation of Section 2 of the Sherman Act.

(1) Whether the District Court erred in relying upon this holding even though the evidence and its own findings negated the Court's stated prerequisites for applying such a rebuttable presumption.

c. Whether the District Court erred in defining the relevant market as national and limited to but one of several effectively competing protective systems, *i.e.*, accredited central station protective service.

d. Whether certain of the District Court's findings of fact and conclusions of law, including, *inter alia*, those to the effect that ADT's business is closely controlled by and ADT [fol. 1337] is principally supplied by defendant Grinnell Corporation, that the asserted position of ADT and other defendants in the defined relevant market resulted from restraints of trade, acquisitions, attempts to monopolize, and a conspiracy to monopolize, that alleged similarities in the business operations of ADT and other defendants manifest conspiratorial conduct in violation of the Sherman Act, and that deficit financial experience in certain cities demonstrates asserted monopoly power, are not clearly erroneous as lacking evidentiary support and contrary to any inference permissible from the record.

e. Whether the District Court erred in admitting and relying upon certain evidence not properly admissible or binding upon ADT.

f. Whether, in view of and even apart from the errors asserted above, the District Court abused its discretion in framing a decree which, *inter alia*, enjoins ADT in vague,

ambiguous, and wholly unlimited terms from "further restraining trade, or attempting or combining to restrain trade, in that designated market and from further attempting to monopolize, or conspiring to monopolize, or monopolizing that designated market," enjoins ADT from all future acquisitions in the defined market, enjoins ADT from availing itself of the services of the Chairman of its Board of Directors, James Douglas Fleming, and subjects ADT and its minority shareholders to the risk of substantial financial loss incident to the requirement that ADT's majority share-[fol. 1338] holder, defendant Grinnell Corporation, divest itself of its stock interest in ADT.

g. Whether the District Court deprived ADT of its right under the Fifth Amendment to the United States Constitution not to be deprived of liberty or property without due process of law, or to suffer its property to be taken for public use without just compensation.

/s/ Matthew W. Goring, Attorney for Defendant, American District Telegraph Company, Address: Industrial Bank Building, Providence, R. I., 401 DE 1-2400.

[fols. 1339-1340] Proof of Service [omitted in printing.]

[fol. 1341] [File endorsement omitted.]

[fol. 1342] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1964

UNITED STATES OF AMERICA, Appellant,

v.

GRINNELL CORPORATION, AMERICAN DISTRICT TELEGRAPH COMPANY, HOLMES ELECTRIC PROTECTIVE COMPANY, AND AUTOMATIC FIRE ALARM COMPANY OF DELAWARE.

APPLICATION FOR AN ENLARGEMENT OF TIME FOR DOCKETING CASE ON APPEAL—March 23, 1965

Pursuant to Rule 13(1) of the Revised Rules, the United States applies for an enlargement of time to and including April 16, 1965, within which to docket its appeal from the United States District Court for the District of Rhode Island in the above-entitled case. The judgment of the district court was entered on November 27, 1964, and the United States filed a notice of appeal to this Court on January 25, 1965. The time for docketing the case in this Court, unless extended, will expire on March 26, 1965. The jurisdiction of this Court will be invoked under 15 U.S.C. 29.

The district court held that the appellees violated Sections 1 and 2 of the Sherman Act by restraining and monopolizing the business of supplying central station protective service, such as fire and burglar alarms, etc. Both the United States and the appellees have appealed. The United States has challenged the judgment as not providing adequate relief; the appellees have challenged the findings of violation and the relief given. The United States and the appellees, with the consent of each other, sought from the district court extensions of time for docketing their appeals in this Court. On March 22, 1965, the district court denied such extensions. [fol. 1343] The record in this case is lengthy and the additional time is needed to study it and to prepare the jurisdictional statement. The appellees have consented to this extension.

We have been advised that the appellees will similarly

seek an extension of time in which to docket their appeals to this Court and we have no objection thereto.

Respectfully submitted, Archibald Cox, Solicitor General.

March 23, 1965.

[fol. 1344] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1964

No.

UNITED STATES, Appellant,

vs.

GRINNELL CORPORATION, AMERICAN DISTRICT TELEGRAPH COMPANY, HOLMES ELECTRIC PROTECTIVE COMPANY, AND AUTOMATIC FIRE ALARM COMPANY OF DELAWARE.

ORDER EXTENDING TIME TO FILE—March 23, 1965

Upon consideration of the application of counsel for the appellant, and the appellees having no objection thereto,

It is ordered that the time for docketing the case and filing the record in the above-captioned cause be, and the same is hereby, extended to and including April 19, 1965.

Arthur J. Goldberg, Associate Justice of the Supreme Court of the United States.

Dated this 23rd day of March, 1965.

[fol. 1345] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1964

No.

GRINNELL CORPORATION, AMERICAN DISTRICT TELEGRAPH COMPANY, HOLMES ELECTRIC PROTECTIVE COMPANY, and AUTOMATIC FIRE ALARM COMPANY OF DELAWARE, Appellants,

v.

UNITED STATES OF AMERICA

APPLICATION FOR EXTENSION OF TIME FOR DOCKETING OF CASE ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES AND FILING JURISDICTIONAL STATEMENT—March 23, 1965

To the Honorable Arthur J. Goldberg, Circuit Justice for the First Circuit:

• • • • • • •

[fol. 1346] Pursuant to Rule 13 of the Revised Rules of this Court, the United States moved before the District Court for an extension until April 16, 1965, for docketing and filing by the United States, and requested, on behalf of defendant-appellants, Grinnell Corporation, Holmes Electric Protective Company, Automatic Fire Alarm Company of Delaware and American District Telegraph Com-
[fol. 1347] pany, an extension of time until April 19, 1965 for docketing and filing by these parties. On March 22, 1965, defendant-appellants were informed that the District Court had denied such motion.

Pursuant to Rule 13 of the Revised Rules of this Court, defendant-appellants now move to extend the time for docketing their appeals and filing their jurisdictional statements in the above-captioned case until April 19, 1965.

• • • • • • •

Counsel for defendant-appellants have been authorized by counsel for the United States to state that plaintiff consents to such extension of time. It is believed that the
[fol. 1348] United States has made or will make a similar

application and defendant-appellants hereby consent to such application.

/s/ Matthew W. Goring, Counsel for Defendants, American District Telegraph Company, Holmes Electric Protective Company, and Automatic Fire Alarm Company of Delaware, Address: Industrial Bank Building, Providence, Rhode Island.
/s/ Denis G. McInerney, Counsel for Defendant Grinnell Corporation, Address: 80 Pine Street, New York, New York 10005.

Dated: March 23, 1965

[fol. 1349] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1964

No.

GRINNELL CORPORATION, AMERICAN DISTRICT TELEGRAPH COMPANY, HOLMES ELECTRIC PROTECTIVE COMPANY, AND AUTOMATIC FIRE ALARM COMPANY OF DELAWARE, Appellants,

vs.

UNITED STATES

ORDER EXTENDING TIME TO FILE—March 23, 1965

Upon Consideration of the application of counsel for the appellants, and the appellee having no objection thereto,

It Is Ordered that the time for docketing the case and filing the record in the above-captioned cause be, and the same is hereby, extended to and including April 19, 1965.

Arthur J. Goldberg, Associate Justice of the Supreme Court of the United States.

Dated this 23rd day of March, 1965.

[fol. 1350] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1964

Nos. 1081, 1083, 1084, 1085, and 1086

UNITED STATES, Appellant,

v.

GRINNELL CORPORATION, et al.;

GRINNELL CORPORATION, Appellant,

v.

UNITED STATES;

AMERICAN DISTRICT TELEGRAPH COMPANY, Appellant,

v.

UNITED STATES;

HOLMES ELECTRIC PROTECTIVE COMPANY, Appellant,

v.

UNITED STATES; and

AUTOMATIC FIRE ALARM COMPANY OF DELAWARE, Appellant,

v.

UNITED STATES

ORDER NOTING PROBABLE JURISDICTION

Appeals from the United States District Court for District of Rhode Island.

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. The cases are consolidated and a total of two hours is allowed for oral argument.

May 17, 1965.